ADMINISTRATIVE LAW

A court should not decide a constitutional issue when there remains a possibility that an administrative decision will obviate the need for a court decision. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

An unconstitutional statute may not be redeemed by voluntary administrative action. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. When disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM R. 339, 362-63 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM R. 339, 363 (Pon. 1983).

Basic notions of fair play, as well as the Constitution, require that Public Land Authority decisions be made openly and after giving appropriate opportunity for participation by the public and interested parties. Etpison v. Perman, 1 FSM R. 405, 420-21 (Pon. 1984).

When there is reason to believe that provisions of a public land lease may have been violated by the lessee, and when another person has notified the Public Land Authority of his claim of a right to have the land leased to him, the Public Land Authority may not consider itself bound by the lease's renewal provision but is required to consider whether it has a right to cancel the lease, and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM R. 405, 421 (Pon. 1984).

Governmental bodies' adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Etpison v. Perman, 1 FSM R. 405, 422-23 (Pon. 1984).

Analysis of a claim of bias of an administrative decision-maker begins with a presumption that decision-makers are unbiased. The burden is on the challenger to show a conflict of interest or some other specific reason for disqualification. Specific facts, not mere conclusions, are required in order to rebut the presumption. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

When the charges of prejudice of an administrative decision-maker are too conclusory, vague, and lacking in specificity, then they do not bring into question the presumption of impartiality. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 402 (Kos. S. Ct. Tr. 1988).

The Secretary of Finance lacks the authority to terminate administratively the fiscal year prior to its lawful expiration period where such termination precludes the judiciary from making obligations during the entire fiscal year for which an appropriation is made. Mackenzie v. Tuuth, 5 FSM R. 78, 88 (Pon. 1991).

In implementing the provisions of the Financial Management Act the Secretary of Finance must disburse funds within 30 days of the submission of a payment request unless the withholding of payment approval is necessary to prevent the misappropriation or over-obligation of a specific appropriation. Mackenzie v. Tuuth, 5 FSM R. 78, 88 (Pon. 1991).

Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be "reasonable" as with recreational permits. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

The state cannot raise as a defense a plaintiff's failure to comply with its administrative procedures for claims when denial of opportunity for administrative relief is one of the injuries the plaintiff complains of. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 119-20 (Pon. 1993).

Where a state law contains potentially conflicting provisions regarding administrative procedures claimants must follow, the decision of a claimant to follow one provision but not the other so as to preserve her right to bring suit on a claim is reasonable and does not constitute a basis for dismissing the action. Abraham v. Lusangulira, 6 FSM R. 423, 425-26 (Pon. 1994).

It is incumbent on parties to follow administrative procedures concerning their disputes as designated by applicable state law before coming to court unless and until the state law is judged invalid. Abraham v. Lusangulira, 6 FSM R. 423, 426 (Pon. 1994).

Congress may constitutionally authorize by statute administrative agencies to perform many different investigatory functions, among them the auditing of books and records, the issuance of subpoenas requiring the disclosure of information relevant to the agency's functions, and requiring the sworn testimony of witnesses. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 141-42 (Pon. 1995).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 92-93 (Pon. 1997).

When a court case containing a count for trespass and injunctive relief raises the issue of who holds title to the land in question, the case will be transferred to the Chuuk Land Commission for adjudication of the parties' claims to ownership pursuant to its administrative procedure. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

Administrative agencies in the form of Registration Teams and the Land Commission are created and an administrative procedure are provided for the purpose of determining the ownership of land and the registration thereof. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

In some circumstances, two remedies may be available to the same party for the enforcement of the same right, one in the judicial and the other in the administrative forum. Mark v. Chuuk, 8 FSM R. 582, 583 (Chk. S. Ct. Tr. 1998).

In administrative law in regard to controversies in which the same parties and the same subject matter are involved, when two or more tribunals have concurrent jurisdiction, the tribunal first assuming jurisdiction retains it to the exclusion of all other tribunals in which the proceeding might have been initiated. Mark v. Chuuk, 8 FSM R. 582, 583-84 (Chk. S. Ct. Tr. 1998).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land

boundaries, and the Land Commission must be given the chance to conclude its administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

While the naked right to legislate may not be delegated, the power to enforce legislation and to enlarge on standards defined in a statute can be delegated if the statute contains reasonable guidance and reasonable definition of the standards to be employed and the matter that is to be regulated. In order for the delegation of legislative authority to pass constitutional muster, there must be a delineation of policy, a designation of the agency to implement it, and a statement of the outer boundaries of the authority delegated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

If the legislative body has given to administrative officials the power to bring about the result legislated, rather then the power to legislate the result, then there is no unconstitutional delegation of legislative power. A proper delegation of legislative power may be made to an official within the executive branch. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may make a delegation of power to specified officials, or administrative agencies within the executive branch. This necessarily includes the Governor, and such a delegation is appropriate because a proper, limited delegation of power confers on the delegatee the power to bring about a result that has already been legislated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

It was arbitrary and an abuse of discretion for the state to accept an irrevocable letter of credit as security for a transaction from one company and reject the same irrevocable letter of credit from another company. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM R. 311, 316-17 (App. 2003).

The FSM Rules of Civil Procedure do not apply to proceedings before administrative agencies. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

Chuuk Election Code, section 55 involves complaints in general by any citizen involving any misconduct and a candidate, when the candidate is contesting the election of another, is required, not to follow section 55, but to follow the administrative process specifically set forth in sections 123 through 130 for election contests. The completion of the administrative process outlined in section 55 is delegated to the Election Commission, not to the complainant since it is the Commission that makes the referrals to the other agencies, not the complainant. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

Annual representation fund allowance are funds restricted to the purposes and by the procedures set forth in the Representation Fund Act. Chuuk v. Robert, 16 FSM R. 73, 79 (Chk. S. Ct. Tr. 2008).

Any regular employee who is suspended for more than the three working days, demoted, or dismissed may appeal to the branch head or his designee within fifteen days after written notice of the suspension, demotion or dismissal has been transmitted to him, and upon receiving such appeal, the branch head, or his designee, shall form an ad hoc hearing committee of three members. Palsis v. Kosrae, 16 FSM R. 297, 312 (Kos. S. Ct. Tr. 2009).

If an employee's immediate supervisor does not settle a grievance to the employee's satisfaction, then the employee may forward the grievance in writing to the State Personnel Officer and request review by a formal panel. The formal panel will then be provided with the necessary government records, hear the grievance, and make its recommendation to the Governor. The Governor then resolves the grievance. The administrative procedure does not include asking the Director of the Department of Administrative Services to resolve the matter (unless the Director is the aggrieved employee's immediate supervisor). Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

Cases involving effective denials by administrative bodies generally arise where the administrative body fails to take steps to provide an administrative remedy. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

A grant of the power to "sue and be sued" is the usual legal formulation by which a government agency is granted the power to independently hire its own attorneys instead of being represented by the attorney general. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

When the FSM public laws that created a government agency did not confer upon that agency the power to sue and be sued in its own name, that agency cannot be represented in court by any counsel other than the FSM Attorney General. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

Since the Federated Development Authority was an instrumentality of the national government created by an FSM Congress enactment, the presence of (uncompensated) persons, who are not national government employees on the FDA Policy Board does not make the FDA something other than a national government instrumentality. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A government agency's power to sue and be sued in its own name does not mean that the attorney general cannot ever represent that agency or that the attorney general needs express prior authorizations to represent that agency. The attorney general may represent such an agency without any affirmative authorization to do so as long as that agency does not object to the representation. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A demand by opposing parties that they be provided with written authorization from both the two government agencies that permit the FSM Department of Justice to represent each of the agencies is meritless and must be rejected. Arthur v. Pohnpei, 16 FSM R. 581, 591 (Pon. 2009).

Whereas the Pohnpei Division of Personnel, Labor and Manpower Development may issue orders and decisions, the Treasury Director has the final decision, and to give meaning to that finality, the Director's powers include issuing any orders necessary to arrive at and give effect to the decision. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Since the Pohnpei Residents Employment Act of 1991 does not solely empower the Division of PL&MD to hold hearings, and since it does vest the power of the final decision in the Director, it follows both that the hearing before the Director was legitimate pursuant to the Act, and that there was a legitimate hearing pursuant to the Act. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

An unconstitutional statute may not be redeemed by voluntary administrative action. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

52 F.S.M.C. 146 does not provide for administrative remedies or administrative appeals of any kind in abandonment of employment cases. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

The Public Service System Act delineates procedures that must be followed in terminating an employee for unsatisfactory performance and mandates that no dismissal or demotion of a permanent employee is effective until the management official transmits to the employee a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal and it further mandates that any regular employee who is dismissed may appeal through an administrative review process. A crucial part of the administrative review process is a hearing before an ad hoc committee, and subsequent preparation of a full written statement of findings of fact. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

A quorum is defined as the minimum number of members who must be present for a deliberative assembly to legally transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

The commonly recognized definition of a quorum is that it is such a number of a body as is competent to transact business in the absence of the other members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

When three of the five appointed Social Security Board members are present this constitutes a valid quorum or a simple majority, and when, in adding the *ex officio* administrator, four out of the six total members are in attendance, it gives the Board valid authority to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The Social Security Board is competent to execute its duties and responsibilities with the absence of two of the total five members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

When three members are present along with the Administrator, the Social Security Board is competent to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Since the Executive Director of the Department of Education is an office uniquely created by the Chuuk

Constitution, and since both the Chuuk Constitution and the applicable statute provide the sole means by which an Executive Director may be removed, the court must conclude that the general statutory provisions of the Administrative Procedures Act do not apply to the removal of the head of the Education Department. When it comes to the Executive Director's removal, there is no higher administrative agency than the Board of Education. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648-49 (Chk. S. Ct. Tr. 2015).

All College of Micronesia employment contract disputes are to be treated as a grievance, subject to the mandatory grievance procedure which has two components: the informal and the formal. The aggrieved employee must first pursue the grievance informally, and if the efforts to resolve the grievance through the informal procedure have failed, the aggrieved employee may proceed to the formal grievance procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

A former employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the employee was a public service system member, especially if the grievance was pending at the time the employee left the public service system since access to the administrative procedure is not precluded even though the aggrieved party is no longer a public service system employee. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

An administrative body has no more license to deny jurisdiction than to usurp it. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

– Administrative Procedure Act

The FSM Supreme Court finds within the Administrative Procedure Act, 17 F.S.M.C. §§ 101-113, the necessary flexibility to expedite review of an administrative proceeding. Olter v. National Election Comm'r, 3 FSM R. 123, 128 (App. 1987).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA's judicial review provisions are inapplicable to appeals from denial of such petitions. Olter v. National Election Comm'r, 3 FSM R. 123, 130 (App. 1987).

The APA enacted by the Congress of the Federated States of Micronesia is quite similar to the United States Administrative Procedure Act, but differs in that the FSM's APA imposes more affirmative obligations and requires the court to make its own factual determinations. Olter v. National Election Comm'r, 3 FSM R. 123, 131 (App. 1987).

A decision by the Secretary denying applicant a permit to practice law in Yap is an agency decision within the provisions of the Administrative Procedure Act. Michelsen v. FSM, 5 FSM R. 249, 253 (App. 1991).

When the Secretary denied an application for a foreign investment permit without delivering notice of his action, made no statement of the reasons in support of his denial, and failed to report to the President, the decision was made without substantial compliance with the procedures required by law and was

therefore unlawful. Michelsen v. FSM, 5 FSM R. 249, 254-55 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the Federated States of Micronesia, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM R. 249, 256 (App. 1991).

The principle of exhaustion of administrative remedies requires that a plaintiff obtain a final judgment before appeal, and that failure to do so will bar the plaintiff's claims; more specifically, Pohnpei state law provides that employers, employees, or any other persons who are adversely affected by orders or decisions issued without a hearing have the right to a hearing upon request. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

Trust Territory Code Title 17 is retained as Chuuk state law through the Chuuk Constitution's Transition Clause. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.1 (Chk. 2011).

The Administrative Procedures Act applies to all agency actions unless explicitly limited by a Congressional statute, and significantly, it applies even if the enabling act does not mention it. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Although a hearing officer has the discretion to decide which recording method to use, stenographic or recording machine, the hearing officer does not have the discretion to altogether fail to make a record of the hearing. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

At the hearing officer's discretion, evidence may be taken stenographically or by recording machine. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

– Exhaustion of Remedies

Exhaustion of administrative remedies before suing in court is not required when it would be futile for a plaintiff to pursue an administrative remedy. Chuuk v. Secretary of Finance, 7 FSM R. 563, 566 n.4 (Pon. 1996).

Although not listed in Civil Rule 8(c) failure to exhaust administrative remedies is an affirmative defense. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 618 (App. 1996).

It is not necessary to exhaust one's administrative remedies before filing suit when to do so would be futile. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

When an administrative remedy is provided by statute, relief ordinarily must not only be sought initially from the appropriate administrative agency but such remedy usually must be exhausted before a litigant may resort to the courts. Choisa v. Osia, 8 FSM R. 567, 569 (Chk. S. Ct. Tr. 1998).

The rule requiring the exhaustion of administrative remedies is a wholesome one and an aid to the proper administration of justice. One of the important reasons, is to prevent the transfer to courts of duties imposed by law on administrative agencies. Choisa v. Osia, 8 FSM R. 567, 569 (Chk. S. Ct. Tr. 1998).

The doctrine of exhaustion of administrative remedies requires that no one is entitled to bring a land

dispute to court until the Land Commission has been given a chance to decide the case because the Land Commission is the proper forum for the determination of land ownership. Choisa v. Osia, 8 FSM R. 567, 569 (Chk. S. Ct. Tr. 1998).

When the administrative steps essential for court review of employment terminations have not yet been completed, the court cannot review the termination. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

Since no appeal process for grievances existed from June 1997 to February 1998, during which time the complaint was filed, it would have been futile for the plaintiff to follow administrative procedures regarding her grievance. Exhaustion of administrative remedies before suing in court is not required when it would be futile for a plaintiff to pursue an administrative remedy. Abraham v. Kosrae, 9 FSM R. 57, 60-61 (Kos. S. Ct. Tr. 1999).

There are no provisions in Title 18 that prohibit an the filing of a civil action by non-employee for a grievance based upon facts which occurred during his or her employment with the Kosrae state government. For employees, Title 18 provides that an administrative procedure must be followed first, as prescribed by their branch heads. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

Disciplinary actions, suspensions, demotions and dismissals, taken in conformance with Title 18 are in no case subject to review in the courts until the administrative remedies have been exhausted. Grievances are not disciplinary actions. Title 18 does not provide any limitations on the court's review of grievances or grievance appeals. There is no limitation of judicial review with respect to grievances. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

A person, including a corporation, who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to judicial review. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

The Yap State Code provides that one who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case shall be entitled to judicial review. International Bridge Corp. v. Yap, 9 FSM R. 390, 394, 395 (Yap 2000).

A court will not dismiss a case for failure to exhaust administrative remedies when to do so would require the plaintiff to pursue relief through an unconstitutional procedure. Udot Municipality v. FSM, 9 FSM R. 560, 563 (Chk. 2000).

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek the decision's reversal at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 89 (Pon. 2003).

A plaintiff's complaint will not be dismissed because a plaintiff failed to exhaust its administrative remedies by not presenting the substance of its complaint to an agency before filing it with the court when the defendant cannot point to any administrative procedure that the plaintiff should have followed before filing the action, but did not. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 89-90 (Pon. 2003).

A defense that a plaintiff failed to exhaust its administrative remedies, but which does not specify precisely what administrative procedures would be involved and which was not pled, is thus waived. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

While under normal circumstances exhaustion of administrative remedies is a pre-requisite to bringing an action in court challenging the constitutionality of personnel actions, an exception to this general rule exists. When exhaustion of administrative remedies is rendered futile, due to the bad faith, improper

actions or predetermination of the administrative body itself, exhaustion of the administrative process is not required, and redress may be immediately sought in the courts. Tomy v. Walter, 12 FSM R. 266, 270 (Chk. S. Ct. Tr. 2003).

An exception to the requirement of exhausting administrative remedies first is if to do so would be futile. Wiliander v. National Election Dir., 13 FSM R. 199, 203 n.2 (App. 2005).

Failure to exhaust administrative remedies is an affirmative defense. Thus, the plaintiff is not required to plead and prove that it has exhausted its remedies. Rather, the burden to plead and prove the defense falls upon the defendant. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

When the statute provides that disciplinary actions taken in conformance with it shall be in no case subject to review in the courts until the administrative remedies therein have been exhausted, but when the plaintiff's termination was not the result of a disciplinary action but was either because the plaintiff held a position where he served at the governor's pleasure or that the proper Public Service System procedures were not used to hire the plaintiff, the lawsuit does not fall within the statute's reach and the case will not be dismissed for failure to exhaust administrative remedies. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

It is not necessary to exhaust one's administrative remedies before filing suit when to do so would be futile. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

When an administrative remedy is provided by statute, relief ordinarily must not only be sought initially from the appropriate administrative agency but such remedy usually must be exhausted before a litigant may resort to the courts. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157-58 (Pon. 2006).

An appeal from an administrative agency must be started within the established statutory time period. This has the salutary effect of permitting resolution by the administrative agency, which may either satisfy the aggrieved party or mollify his concerns, thus conserving scarce judicial resources. The only exception to the requirement to exhaust this remedy first is if to do so would be futile. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 n.2 (App. 2007).

The doctrine of exhaustion of remedies requires that a potential plaintiff follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision before bringing the dispute to the attention of the judiciary. It is incumbent on parties to exhaust administrative procedures concerning their disputes as designated by applicable state law before coming to court, unless and until the state law is judged invalid. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

Closely related to the requirement of exhausting all administrative remedies before seeking judicial redress is the doctrine of res judicata, which bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits that has been affirmed on appeal or for which time for appeal has expired. Once a plaintiff availed himself of the administrative remedies available for claims under Pohnpei state law, he was obligated to exhaust those remedies as provided by Pohnpei state law before filing suit in the FSM Supreme Court. When the plaintiff failed to exhaust these remedies by failing to appeal the Pohnpei administrative decision, his claims for unpaid wages, overtime, wrongful termination and criminal penalties are barred as a matter of law. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

When an employee has made no attempt to seek redress through the administrative procedure although she apparently did seek payment directly from the Department of Administrative Services, which is not part of the administrative grievance procedure, she has not exhausted her administrative remedies before she filed suit because neither the Department of Administrative Services nor its Director is the arbiter of administrative grievances. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

An employee has not shown that trying to obtain relief for unpaid wages through the administrative process would have been futile when the only evidence is the Director of Administrative Services's letter that applied only to employees in another department whose paychecks were not processed since there is no evidence that funds were not available to pay employees in the employee's department or that liability would be denied for any just claim for unpaid wages on the ground no funding was then available, especially since a claimed inability to pay is not a defense to liability. Thus, whether the state had funds to pay has no bearing on whether it is liable for payment. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Exhaustion of administrative remedies is ordinarily a prerequisite for judicial jurisdiction. This rule is a wholesome one and an aid to the proper administration of justice since it prevents the transfer to courts of duties imposed by law on administrative agencies. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Absent a showing that the election commission had failed to take meaningful action on their complaint since the court's remand, the court could not take jurisdiction over the remanded election contest since, if the court had taken jurisdiction over the merits of the case before administrative remedies had been exhausted, it would have circumvented the power vested in the election commission to have primary jurisdiction over election contests and the court's rulings would have been subjected to appeal for lack of jurisdiction when administrative remedies had not yet been exhausted. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 517 (Chk. S. Ct. App. 2009).

The principle of exhaustion of administrative remedies requires that a plaintiff obtain a final judgment before appeal, and that failure to do so will bar the plaintiff's claims; more specifically, Pohnpei state law provides that employers, employees, or any other persons who are adversely affected by orders or decisions issued without a hearing have the right to a hearing upon request. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

If the Director had jurisdiction, the plaintiff's claims are statutorily barred for his failure to appeal the Director's decision to the Pohnpei Supreme Court trial division within 15 days, but if the Director had no jurisdiction, then the plaintiff has clearly failed to exhaust his administrative remedies, meaning that the plaintiff may not yet come to court on the claims for unpaid wages, overtime and wrongful termination. Smith v. Nimea, 17 FSM R. 284, 288 (Pon. 2010).

Failure to exhaust administrative remedies is an affirmative defense which a defendant must plead and prove. But when a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

When Chuuk has acknowledged that any further pursuit by the employee of his administrative remedies would be futile, Chuuk cannot, since futility is a legal exception to the exhaustion of administrative remedies doctrine, prevail on its defense that the employee has failed to exhaust his administrative remedies or on the ground that the court lacks subject-matter jurisdiction because that ground was based on the failure to exhaust his administrative remedies. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

Administrative remedies provided for by statute do not have to be exhausted when to pursue them would be futile, particularly when the claims are not for money damages but seek declaratory and injunctive relief. Perman v. Ehsa, 18 FSM R. 452, 455 (Pon. 2012).

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review are both affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The Kosrae State Court has original jurisdiction in all cases except those within the exclusive and original jurisdiction of inferior courts and it has jurisdiction to review all decisions of inferior courts. Since

no inferior court is assigned original jurisdiction over state employee grievances, the Kosrae State Court has jurisdiction over state employees' claims for pay once they have exhausted their administrative remedies. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Failure to exhaust administrative remedies is an affirmative defense that ordinarily must be pled or it is deemed waived. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The movants have not shown that there are any jurisdictional steps that the plaintiff failed to take or any jurisdictional deadlines that it failed to meet when the statute and attendant regulations that the movants rely on apply only to Pohnpei state government procurement contracts – bidding for contracts where the vendor bidders are competing to sell goods or services – personal property and, in this case, the bidders were not seeking to sell anything to Pohnpei, but were seeking to acquire real estate rights – to lease government land and fish processing facilities (not personal property) from the state government. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656-57 (Pon. 2013).

A plaintiff does not have to exhaust one's administrative remedies before filing suit when to do so would be futile. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

Exhaustion of remedies is the doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

The exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Once those procedures have been completed, however, the plaintiff is entitled to judicial review, under the appropriate standard, when there is a "non-frivolous dispute." Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, the court may dismiss the petition without prejudice allowing the plaintiff to refile so that the litigation's pleading might accurately reflect the administrative deficiency with new and accurate pleadings. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

Exhaustion of administrative remedies is ordinarily a prerequisite for judicial jurisdiction and until those remedies are completed the court expressly cannot review the action. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

The express language of Title 52 creating the National Public Service System Act, requires that the exhaustion of remedies doctrine be applied. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

No statute requires College of Micronesia employees to exhaust their administrative remedies before seeking judicial review. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

As a corollary to the exhaustion of remedies doctrine, the courts have created the doctrine of primary jurisdiction. This doctrine should not be confused with the exhaustion of remedies, but the goals of the two are the same. Primary jurisdiction is a doctrine of common law, wholly court-made, that is designed to guide a court in determining whether and when it should refrain from or postpone the exercise of its own jurisdiction so that an agency may first answer some question presented. The primary jurisdiction doctrine arose in recognition of the need for an orderly coordination between the functions of court and agency in

securing the objectives of their often overlapping competency as agencies and courts often have concurrent jurisdiction. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at the plaintiff's election, but public policy nevertheless requires that the matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

When the court's jurisdiction has been limited by the exhaustion of remedies doctrine, the court can only hear a petition for review of the agency action and the plaintiff can only argue that the agency action does not stand up under the proper administrative standard of review, which may be extremely limited according to the prescribed standard for review. But under the primary jurisdiction doctrine, the plaintiff can argue that the agency action cannot stand up under a petition, or request a de novo trial on the common law claim which can be decided in a way that leads to a result different from that asserted by the agency since the plaintiff is not bound by the standards of review which often require the court to apply a heightened level of deference to the agency's decisions. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Exhaustion of remedies is the doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, however, the court will dismiss the petition without prejudice, allowing the plaintiff to refile so that the pleadings might accurately reflect the administrative deficiency. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

An aggrieved employee is entitled to the administrative process regardless of his or her current employment status if it emerges from an employment dispute that was existing at the time the employee left, or if the termination itself is the reason that the person left the public service system. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

It is without jurisdictional significance that a person may, or may not be, covered under the Public Service System Act in her current employment position. It is enough that she indisputably was and that she properly began that grievance process and has the right to see it through to completion. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

A seaman employed by the FSM is a contract employee and therefore does not fall under the purview

of Title 52 and would not be required to have his grievance reviewed at the administrative level before filing suit in the FSM Supreme Court. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

In cases where exhaustion of remedies is not required by statute, the exhaustion requirement is discretionary with the courts, rather than an absolute bar to judicial consideration, and must be applied in each case with an understanding of its purposes and of the particular administrative scheme involved. Where justification for invoking the doctrine of exhaustion of administrative remedies is absent, the doctrine's application is unwarranted and will be waived. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, § 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

The statute of limitations cannot be said to have continued to run as against a public employee's claim when the administrative decision was issued in his favor and the administrative grievance process was still pending as to a determination of damages. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

– Judicial Review

It is inappropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional when the administrative steps essential for the court's review of employment terminations have not yet been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R. 201, 202 (Pon. 1982).

The National Public Service System Act plainly manifests a congressional intention that, when there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

When a Public Land Authority has erred procedurally, but there is no suggestion of bad faith or substantive violations by the Authority, the FSM Supreme Court may appropriately employ the doctrine of primary jurisdiction to remand the public land issue to the Authority for its decision. Etpison v. Perman, 1 FSM R. 405, 429 (Pon. 1984).

Unless restricted by law, we must presume that this court has jurisdiction to review final administrative or agency actions. There is reviewability except where: 1) statutes preclude judicial review; or 2) administrative/agency action is committed to administrative/agency discretion by law. Amor v. Pohnpei, 3 FSM R. 28, 29 (Pon. S. Ct. Tr. 1987).

When subsection 3(e) section 27 of the State Public Service System Act of 1981 is read in conjunction with subsection 3(f), it becomes clear that the Legislature had not intended to limit the right to judicial review and that the statute does not preclude the court from reviewing any decision of the Personnel Review Board. Amor v. Pohnpei, 3 FSM R. 28, 30 (Pon. S. Ct. Tr. 1987).

There is no provision in the Public Service Act nor in the Public Service System Regulation that establishes a time limit for seeking judicial review of agency action. For this reason, the court adopts the six-year statute of limitations established in 6 TTC 305 and holds that the petition for judicial review was filed in a timely manner. Amor v. Pohnpei, 3 FSM R. 28, 33 (Pon. S. Ct. Tr. 1987).

The FSM Supreme Court finds within the Administrative Procedures Act, 17 F.S.M.C. §§ 101-113, the necessary flexibility to expedite review of an administrative proceeding. Olter v. National Election Comm'r, 3 FSM R. 123, 128 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA's judicial review provisions are inapplicable to appeals from denial of such petitions. Olter v. National Election Comm'r, 3 FSM R. 123, 130 (App. 1987).

The FSM Supreme Court need not dwell upon the apparent conflicts between two lines of cases in the United States concerning the scope of judicial review of administrative actions, but should search for reconciling principles which will serve as a guide to court within the Federated States of Micronesia when reviewing agency decisions of the law. Olter v. National Election Comm'r, 3 FSM R. 123, 132 (App. 1987).

It is appropriate for courts to defer to a decision-maker when Congress has told the courts to defer or when the agency has a better understanding of the relevant law. Olter v. National Election Comm'r, 3 FSM R. 123, 133, 134 (App. 1987).

If an agency decision is a considered judgment arrived at on the basis of hearings, a full record, and careful reflection, courts are more likely to rely on the knowledge and judgment of the agency and to restrict the scope of judicial review. Olter v. National Election Comm'r, 3 FSM R. 123, 134 (App. 1987).

Under Kosrae state statute KC 11.614, which says appeals will be heard "on the record" unless "good cause" exists for a trial of the matter, the court does not have statutory guidance as to the standard to be used in reviewing the Land Commission's decision and therefore, in reviewing the commission's procedure and decision, normally should merely consider whether the commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr. 1988).

That a land commission's determination is not sufficiently supported by either reasoning or evidence furnishes "good cause" to permit the reviewing court to conduct its own evidentiary proceeding. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr. 1988).

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 401 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission's determination of ownership of certain lands called Limes, in Lelu, parcel No. 050-K-00, made on July 21, 1985, was sound and fair and will therefore be affirmed by the court. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Semes v. FSM, 4 FSM R. 66, 71 (App. 1989).

The Administrative Procedure Act judicial review provisions do not apply to statutes enacted by the Congress of the Federated States of Micronesia to the extent that those statutes explicitly limit judicial

review. Semes v. FSM, 4 FSM R. 66, 72 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. Semes v. FSM, 4 FSM R. 66, 72 (App. 1989).

The Kosrae State Court in reviewing appeals from the Executive Service Appeals Board is empowered to overturn or modify the Board's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing factual determinations made by the Board. Palik v. Executive Serv. Appeals Bd., 4 FSM R. 287, 289 (Kos. S. Ct. Tr. 1990).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. Michelsen v. FSM, 5 FSM R. 249, 252-53 (App. 1991).

The standard of review of an agency decision is to determine whether the action was lawful. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

Strong policy considerations favor terminating disputes and upholding the finality of a decision when the party attempting to appeal has failed to act in timely fashion. Charley v. Cornelius, 5 FSM R. 316, 317-18 (Kos. S. Ct. Tr. 1992).

When a time requirement has been statutorily established courts are generally without jurisdiction to hear an appeal authorized by statute unless the appeal is filed within the time prescribed by statute. Charley v. Cornelius, 5 FSM R. 316, 318 (Kos. S. Ct. Tr. 1992).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM R. 28, 30 (Chk. 1993).

The Administrative Procedures Act provides for judicial review of administrative acts and applies to all agency actions unless explicitly limited by a Congressional statute. It mandates the court to "conduct a de novo trial of the matter," and to "decide all relevant questions of law and fact." Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Judicial review of agency actions must first be sought in the trial division unless there is a specific statute which provides otherwise. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138-39 (App. 1993).

The public policy against extended litigation does not mandate a direct appeal to the appellate division from an agency action since the statutory scheme unambiguously requires pursuit of remedies in the trial division first, and the trial division proceeding may resolve the matter. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 139 (App. 1993).

The Chuuk State Supreme Court has constitutional jurisdiction to review the actions of any state administrative agency, and decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action. Robert v. Mori, 6

FSM R. 178, 179 (Chk. S. Ct. Tr. 1993).

When an appeal from an administrative agency decision involves an issue of extreme time sensitivity and of national importance that ultimately would have to be decided by the appellate division the court may allow a direct appeal to the appellate division. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

The judiciary must reject administrative constructions which are contrary to clear legislative intent because, although courts should, where appropriate, defer to an agency's authorization, there are limits to that deference. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. Wiliander v. Mallarme, 7 FSM R. 152, 158 (App. 1995).

Because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division, under 67 TTC 115, exercises appellate review of Land Commission decisions. Nakamura v. Moen Municipality, 7 FSM R. 375, 377 (Chk. S. Ct. Tr. 1996).

The Chuuk State Supreme Court has limited review of administrative agency decisions and cannot act as a finder of fact unless it grants a trial de novo. A trial de novo is only authorized in reviewing an administrative hearing where the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. Nakamura v. Moen Municipality, 7 FSM R. 375, 377-78 (Chk. S. Ct. Tr. 1996).

In reviewing decisions of administrative agencies the Chuuk State Supreme Court shall review the whole record and due account shall be taken of the rule of prejudicial error. Nakamura v. Moen Municipality, 7 FSM R. 375, 378 (Chk. S. Ct. Tr. 1996).

The Chuuk State Supreme Court will not overturn factual findings of the Land Commission that turn on witness credibility because such findings are not clearly erroneous. Nakamura v. Moen Municipality, 7 FSM R. 375, 378 (Chk. S. Ct. Tr. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

On appeal the court should not substitute its judgment for those well-founded findings of the land commission, but questions of law are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

It is axiomatic that determining the legal implication of a different case is a question of law, and on appeal questions of law presented to a state agency are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

If, on remand from an appeal to the trial court, all that is left for the administrative agency to do is ministerial, the order of remand is final. If the agency has the power and duty to exercise residual discretion, to take proof, or to make an independent record, its function remains quasi-judicial, and the remand order is not final. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state

administrative agency, board, or commission, as may be provided by law. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

In reviewing appeals from the Executive Service Appeals Board, the Kosrae State Court is empowered to overturn or modify the ESAB's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing the ESAB's factual determinations. If there is any factual basis for the ESAB's decision, it will be upheld, assuming no other violation or law or regulation. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court cannot substitute its judgment for that of the Executive Service Appeals Board, but in reviewing the ESAB's findings it may examine all of the evidence in the record in determining whether the factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

Employee grievances were subject to judicial review by the Kosrae State Court, following the completion of certain administrative procedures, specifically review by the Executive Service Appeals Board. The court may reverse or modify ESAB's decision only if finds a violation of law or regulation. Langu v. Kosrae, 8 FSM R. 455, 457, 458 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court does not have jurisdiction to review employee grievances of persons who did not first comply with the statutorily required administrative procedure. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

The Chuuk Judiciary Act of 1990, Chk. S.L. No. 190-08, states in part that the reviewing court shall declare unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. Mathew v. Silander, 8 FSM R. 560, 563-64 (Chk. S. Ct. Tr. 1998).

When a plaintiff seeks to establish a claim in a court action that is identical to the claim he already established in administrative proceedings, a court judgment could do no more, and payment of the claim can only be lawfully done by legislative appropriation. Mark v. Chuuk, 8 FSM R. 582, 583 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. The Judiciary Act of 1990, Chk. 190-08, § 18, provides that a person adversely affected or aggrieved by an agency action, is entitled to judicial review thereof. Mark v. Chuuk, 8 FSM R. 582, 584 (Chk. S. Ct. Tr. 1998).

A person who has not been adversely affected or aggrieved by administrative action cannot seek court review when his rights were fully protected by his successful administrative claim. His remedy is not with the judiciary, but with the Legislature for an appropriation to pay his claim. Mark v. Chuuk, 8 FSM R. 582, 584 (Chk. S. Ct. Tr. 1998).

Administrative procedures, where applicable and valid, must be followed before seeking judicial disposition of matter. It is incumbent on parties to follow administrative procedures concerning their disputes as designated by applicable state law before coming to court unless and until the state law is judged invalid. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

Under Title 18, there is no limitation on the court's jurisdiction to hear claims based upon a grievance filed by a former employee of the Executive Branch. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

An appeal from the Executive Service Appeals Board's decision to the Kosrae State Court was available for state employee grievances. The Kosrae State Court trial division's jurisdiction to reverse or modify a finding of the ESAB was limited under Kosrae State Code section 5.421(2) to violations of law or regulation. In this regard, the state court acted as an appellate tribunal. Kosrae v. Langu, 9 FSM R. 243, 246 & n.2 (App. 1999).

On an appeal from the Executive Service Appeals Board's decision it was not within the authority of the Kosrae State Court to make new factual determinations in light of the express stricture in section 5.421(2) that the state court could reverse or modify an ESAB finding only if it finds a violation of law or regulation. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Although an inquiry whether state employees were not exempt, but were permanent employees under section 5.409, is fact driven – the court or other administrative body must determine material facts before it can apply the statute to those facts – the final determination whether an individual falls within a specific category defined by statute is necessarily one of law, not fact. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

When an administrative procedure and ensuing appeal has afforded parties complete relief for their grievances pursuant to statutes and regulations and the parties' constitutional claims are not the basis for any separate or distinct relief, the constitutional issue need not be reached. Kosrae v. Langu, 9 FSM R. 243, 250-51 (App. 1999).

Rejection of a contractor's bid on the basis it was incomplete is a final administrative determination which confers on the bidder the right to judicial review. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

Under Yap law, proceedings for judicial review of an agency decision may be instituted by filing a petition in a court of competent jurisdiction within thirty days after the issuance of the decision to be reviewed. The agency may grant, or the court may order, a stay of the administrative agency's final decision on appropriate terms. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

Judicial review of an agency decision is confined to the record, although the court may receive briefs, hear oral argument, and receive supplemental evidence. The court cannot substitute its judgment for that of the agency on factual questions and must give appropriate weight to the agency's experience, technical competence, and specialized knowledge. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

When there was no formal hearing requiring transcription, the court may shorten the time before oral argument on judicial review of an agency decision. International Bridge Corp. v. Yap, 9 FSM R. 362, 366 (Yap 2000).

When the court has scheduled oral argument for judicial review of an agency decision, when the state is facing time constraints, and when the aggrieved party, although it has presented a fair question for determination on the record, has not demonstrated to the court's satisfaction that it is so likely to prevail, the court will exercise its discretion not to enter a stay or a TRO. International Bridge Corp. v. Yap, 9 FSM R. 362, 366 (Yap 2000).

In an appeal from an administrative agency under 10 Y.S.C. 164, judicial review is be confined to the record, and upon any party's request, the court will receive briefs and hear oral argument, and the court also may, in it discretion, receive any evidence necessary to supplement the record. International Bridge Corp. v. Yap, 9 FSM R. 390, 394-95 (Yap 2000).

An administrative agency proceeding in which the legal rights, duties or privileges of a party were determined is a "contested case" that may be subject to judicial review. International Bridge Corp. v. Yap, 9 FSM R. 390, 395 (Yap 2000).

The standard for judicial review of an agency decision under 10 Y.S.C. 165 is the court may reverse or modify the agency's decision, or remand the case for further proceedings if the petitioner's substantial rights have been prejudiced because the agency's decision is a) in violation of applicable constitutional or statutory provisions; b) in excess of the agency's statutory authority; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of the reliable, probative and substantial evidence in the whole record; or f) arbitrary, capricious, or characterized by abuse of discretion. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

In judicial review of an agency decision the court may not substitute its judgment for that of the agency as to issues of fact, and the court shall give appropriate weight to the agency's experience, technical competence, and specialized knowledge. Hence, the deference paid to an agency's technical expertise is an implicit part of the abuse of discretion standard applied by a reviewing court. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

A court must fully take into account the discretion that is typically accorded an official in the procurement agencies by statutes and regulations. Such discretion extends not only to the evaluation of bids submitted in response to a solicitation but also to the agency's determination with respect to the application of technical, and often esoteric, regulations to the complicated circumstances of individual procurement. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

A reviewing court may not overturn a state agency's decision unless the challenger meets the heavy burden of showing that the decision had no rational basis or involved a clear and prejudicial violation of applicable statutes or regulations. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

It is not for the court to second-guess the state's determination that a bidder's related experience was insufficient to qualify it as the lowest responsible bidder because a court has no warrant to set aside agency actions as arbitrary or capricious when those words mean no more than that the judge would have handled the matter differently had he been an agency member. International Bridge Corp. v. Yap, 9 FSM R. 390, 404 (Yap 2000).

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A court reviewing a land commission determination must have before it a full and complete record upon which the land commission's final decision on the parties' claims was based. An agency action is subject to *de novo* review when the agency action is adjudicative in nature and its fact finding procedures are inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 492 (Chk. S. Ct. Tr. 1999).

Not only is a full and complete record of the land commission's action needed for court review, but the Trust Territory Code requires that there be a full and complete record of any land commission determinations. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Although the land commission may appoint a land registration team to conduct hearings and adjudicate

the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

If the land commission approves the land registration team's report, either initially or after remand for further hearings, and issues a determination, it is the land registration team's record that will be subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Without a full and complete record of the land commission's determination, a reviewing court cannot conduct a fair and meaningful review of the land commission's actions. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

When the land commission's determination provides no explanation as to why it apparently rejected the land registration team's determination or how it reached its own determination, when the absence of a complete record makes it impossible for the court to review the land commission's determination, and when even if the court were to review the matter giving due regard for the rule of prejudicial error, the land commission's decision would be set aside for its failure to observe procedures required by the Trust Territory Code, the court, given the land commission's failure to prepare a complete record and the time elapsed, will conduct a *de novo* review of the land commission action. In re Lot No. 014-A-21, 9 FSM R. 484, 494-95 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court will not set aside a Land Commission determination on the ground that members of the land registration team were not residents of Weno when that issue was not raised and argued before the Land Commission. O'Sonis v. Sana, 9 FSM R. 501, 502 (Chk. S. Ct. Tr. 2000).

Jurisdiction of the Chuuk State Supreme Court trial division in appeals from the Land Commission is limited to a review of the Land Commission record and is not a trial de novo. O'Sonis v. Sana, 9 FSM R. 501, 502-03 (Chk. S. Ct. Tr. 2000).

The Chuuk State Supreme Court applies the "clearly erroneous" standard of review when considering the decisions of administrative agencies. O'Sonis v. Sana, 9 FSM R. 501, 503 (Chk. S. Ct. Tr. 2000).

If an agency decision is a considered judgment arrived at on the basis of hearings, a full record, and careful reflection, courts are more likely to rely on the agency's knowledge and judgment and to restrict the scope of judicial review. O'Sonis v. Sana, 9 FSM R. 501, 503 (Chk. S. Ct. Tr. 2000).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 9 FSM R. 523, 524-25 (Kos. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Kufus v. Palsis, 9 FSM R. 526, 527 (Kos. S. Ct. Tr. 2000).

With respect to review of factual findings, the court, when reviewing a Land Commission decision, normally should merely consider whether the Land Commission has reasonably assessed the evidence presented. On appeal the court should not substitute its judgment for those well-founded Land Commission findings because it is primarily the Land Commission's task, and not the reviewing court's, to assess the witnesses' credibility and resolve factual disputes, since the Land Commission, not the court, was present during the testimony. Heirs of Kufus v. Palsis, 9 FSM R. 526, 527 (Kos. S. Ct. Tr. 2000).

When the Land Commission's findings with respect to the Determination of Ownership are based upon

substantial evidence in the record of the formal hearing and the Land Commission reasonably assessed the evidence that was presented at the hearing and has properly resolved the legal issues presented its decision will be affirmed. Heirs of Kufus v. Palsis, 9 FSM R. 526, 528 (Kos. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, considers whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Taubert v. Talley, 9 FSM R. 541, 542 (Kos. S. Ct. Tr. 2000).

On appeal the court should not substitute its judgment for those well-founded findings of the Land Commission, but questions of law are reserved to the court and the court must consider whether the Land Commission has reasonably assessed the evidence presented. Taubert v. Talley, 9 FSM R. 541, 542 (Kos. S. Ct. Tr. 2000).

The Land Commission's finding of fact that the appellee obtained title to the land through a land exchange was based upon a reasonable assessment of the evidence and was not clearly erroneous when supported by testimony of a witness who was cross-examined on other points of his testimony, but was not cross-examined about the land exchange, because an inference of the failure to cross-examine about the land exchange testimony was the opponent's acceptance of those facts testified to by the witness. The Land Commission's decision will thus be affirmed. Taubert v. Talley, 9 FSM R. 541, 543 (Kos. S. Ct. Tr. 2000).

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court. The court shall conduct a de novo trial of the matter, and shall decide all relevant questions of law and fact. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 28 (Pon. 2001).

The Chuuk State Election Commission must meet within three days after certification to consider any complaints. A contestant is justified in considering the Commission's failure to meet within its deadline as a denial of his complaint, and is thus entitled to file a notice of appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153-54 (Chk. S. Ct. App. 2001).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

The election statute does not contain a deadline to file an election contest appeal from the Chuuk State Election Commission. The only deadlines in the statute that relate to the court are that the court must "meet within 7 days of its receipt of a complaint to determine the contested election," and that the court must "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

An appellee's cross appeal in an election case will be dismissed when there was no evidence that he had ever raised the issue before either the tabulating committee or the Election Commission. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

The absence of a filing deadline in the election statute means that there is no statutory jurisdictional time bar to an appeal, but that any election contest party who appeals within seven days of when the declared winning candidates are to take office runs the risk that the court will either not meet before its

authority to decide the appeal expires or that court may be unable to conclude the proceedings and make its decision before its authority to decide the appeal expires. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

On appeal the Kosrae State Court should not substitute its judgment for those well-founded findings of the Land Commission because it is primarily the task of the Land Commission, and not the reviewing court, to assess the witnesses' credibility and resolve factual disputes, since it is the Land Commission, and not the court, who is present during the testimony. Therefore, the Kosrae State Court should review the Land Commission record and determine whether the Land Commission reasonably assessed the evidence presented, with respect to factual issues. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

A Land Commission opinion must reflect a proper resolution of the legal issues. If it does not, the decision must be set aside. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

The Trust Territory Public Service System Regulations did not require an employee grievance be heard by the Personnel Board in the formal grievance procedure prior to filing suit in court on that grievance. There was no limitation on judicial review of grievances imposed by the Public Service System Regulations, as long as the informal grievance procedure was completed. Skilling v. Kosrae, 10 FSM R. 448, 452 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of judicial review of final decisions made under the State Public Service System is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The court is authorized to compel, or hold unlawful and set aside agency actions. Jackson v. Kosrae, 11 FSM R. 197, 199 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Taulung v. Jack, 11 FSM R. 345, 347 (Kos. S. Ct. Tr. 2003).

On appeal, the Kosrae State Court may not substitute its judgment for those Land Commission findings which are based upon a reasonable assessment of the evidence. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

When the Land Commission's finding a witness with no interest in the land more credible was based upon a reasonable assessment of the evidence presented at the hearing, the court will not substitute its

judgment for the findings of the Land Commission. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

The Land Commission was not clearly erroneous in accepting hearsay testimony of a dead man's statements in its findings when there is no "deadman's statute" in Kosrae and it was based upon a reasonable assessment of the evidence presented at the hearing, the court will not substitute its judgment for the Land Commission's. Taulung v. Jack, 11 FSM R. 345, 348-49 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Henry v. Palik, 11 FSM R. 419, 421 (Kos. S. Ct. Tr. 2003).

When the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the Determination of Ownership as void and remanded to Kosrae Land Court for further proceedings. Heirs of Henry v. Palik, 11 FSM R. 419, 423 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

If the Chuuk State Supreme Court determines that a de novo review of an appeal from Land Commission is appropriate, the plaintiff must prove his case by a preponderance of the evidence, and the court may make its own findings of fact based on the total record in this case, but if the court does not conduct a de novo review of the case, it merely determines whether the Land Commission's decision was arbitrary and capricious, and whether the facts as found by the Land Commission were clearly erroneous. In re Lot No. 014-A-21, 11 FSM R. 582, 588-89 (Chk. S. Ct. Tr. 2003).

When no detailed findings of fact are included either in the Land Commission Registration Team's two decisions or in the full Land Commission's one decision; when the full Land Commission gave no reason for reversing the Registration Team's determinations and supports its decision with nothing but a mere conclusion; when the newly-discovered Land Commission hearing transcripts do not assist the court in determining how the Land Commission reached its decision; and when there is no indication in the Land Commission record that witness testimony was taken under oath, or that the admitted exhibits were properly authenticated and identified and the exhibits were not contained within the record, there was no basis for the court to review the Land Commission's actions, and a trial de novo was necessary. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

De novo review is appropriate when reviewing an administrative hearing when the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

A motion to amend a complaint to add the FSM as a party will be granted when the original complaint was an appeal of a Pohnpei state administrative decision and when a related FSM administrative decision involving the plaintiff's related tax matters was recently issued since, as the plaintiff asserts that Pohnpei and the FSM are inconsistently interpreting tax laws, it seeks to add the FSM as a defendant so that both Pohnpei and the FSM will be required to tax it uniformly, without potentially subjecting it to double tax liability. Judicial economy weighs in favor of permitting plaintiff to file its amended complaint and consolidate the appeals of inconsistent Pohnpei and FSM administrative decisions. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM R. 1, 2-3 (Pon. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code,

Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM R. 13, 15-16 (Kos. S. Ct. Tr. 2003).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

When the determined parcels' boundaries are clear by either permanent markers or by readily recognizable natural features, the Land Commission is not required to give written notice to the claimants before planting monuments. The planting of monuments is an administrative task and is completed pursuant to the Land Commission's instructions. The Division of Survey's planting of monuments, by itself, does not establish boundaries for purposes of an appeal. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

In reviewing the Land Commission's decision and procedure, the Kosrae State Court must determine whether the Land Commission violated the Kosrae Constitution or state law. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, on appeal, will not substitute its judgment for the Land Commission's well-founded evidentiary findings. An appellate court will not reweigh the evidence presented at the hearing. When the court, in reviewing the Land Commission's record and decision in a matter, concludes that the Commission has reasonably assessed the evidence presented regarding the parcel's size, the Land Commission's factual finding of the parcel's size is adequately supported by substantial evidence in the record, and its findings of fact are not clearly erroneous and will not be disturbed on appeal. Tulenkun v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

Any person aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 79-80 (Kos. 2003).

In an appeal from an administrative agency to the FSM Supreme Court appellate division, Appellate Rule 26(b) would control. That rule precludes the appellate division from enlarging the time for filing a notice of appeal from an administrative agency. Because this provision limits the appellate division's power to enlarge time, it is jurisdictional. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60 day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer. The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

A denial of a motion to dismiss for lack of jurisdiction is without prejudice to Social Security's right to raise the statute of limitations defense by motion pursuant to FSM Civil Rule 12(c). Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

When a plaintiff's claims for unjust enrichment, tortuous interference with contract and fraud arise out

of the same operative facts, but are against a defendant personally and are distinctly separate from those which have been brought against the administrative agency, they are tort claims against which the individual, not the agency, needs to defend, and regarding which the agency is not authorized to make judicial determinations. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When a state administrative agency asks that the FSM Supreme Court not exercise jurisdiction in a case because the case involves a question about land, and land issues are best (and traditionally) left to the state court, but when a deeper analysis reveals that the case is not fundamentally a land case, but rather one in which the court is being asked to review an agency's action and determine whether that action was lawful from an administrative or procedural point of view, not a substantive one, the question presented is not whether the plaintiff is entitled to the assignment of the lease in question, but rather whether the board possessed the authority to reconsider its decision and, if so, did it do so in a manner that recognized plaintiff's rights under the FSM Constitution. In such a case, the FSM Supreme Court does not lack subject matter jurisdiction, and the plaintiff's complaint will not be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When, through the discovery process, further briefing, and a trial, a plaintiff could show that an agency acted in a manner that violated its statutory duties and when its motion to dismiss fails to set forth the applicable laws and administrative rules that dictate how it conducts business, the court is disinclined to decide as a matter of law that its actions were authorized, lawful, and procedurally correct and will allow the claim to remain, allow further briefing and discovery, and then entertain a motion for summary judgment. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

The court will not add additional time for a petitioner to seek judicial review when the social security statute gives 60 days and this is a considerable amount of time, and when even given the exigencies of mail service in Micronesia, equitable considerations do not require that additional time be given. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

In an appeal from a Land Commission determination of ownership, the reviewing court will apply the clearly erroneous standard of review. If the agency decision is a considered judgment, arrived at on the basis of a full record and careful reflection, the court is more likely to rely on the agency's knowledge and judgment and to restrict the scope of review. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 186 (Pon. 2003).

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).

When it is clear that any attempt by plaintiff to obtain relief through the Public Service Act would have been futile, the court has jurisdiction to hear the plaintiff's claims. Tomy v. Walter, 12 FSM R. 266, 270 (Chk. S. Ct. Tr. 2003).

The 120-day statutory time limit to appeal from the Kosrae Land Commission to the Kosrae State Court is jurisdictional because deadlines set by statute, especially deadlines to appeal including those from administrative agency decisions, are generally jurisdictional. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting an appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

It is standard appellate procedure (as used in judicial review of administrative decisions) to file briefs and hear oral argument on them. This permits the appellate parties to argue errors of law or other deficiencies in the proceeding below and to direct the court's attention to those parts of the record that support their contentions. Briefs are not evidence, and a hearing on them is not a trial. Anton v. Cornelius, 12 FSM R. 280, 286-87 (App. 2003).

That the Land Commission did not properly consider certain evidence, is an issue the Kosrae State Court may properly consider under its standard of review without the need for a trial *de novo*, and, if the appellant should prevail, it can order a remand. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The statute contemplates that judicial review of a Land Commission appeal would be the norm and that a trial *de novo* would be held only in the uncommon event that the Kosrae State Court had found good cause for one. When that court did not, and when there has been no showing that would warrant a conclusion of good cause, the Kosrae State Court has not abused its discretion by not holding a trial *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The Kosrae State Court, in reviewing Land Commission appeals, properly uses the following standard of review – it considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, that court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

A trial de novo gives each side the opportunity to present evidence as if no previous adjudication had been made. The trial judge is placed in the fact finding position – rather than just reviewing the record, he

receives evidence and testimony and reaches his own conclusions based upon all of the evidence. Thus, it does not matter to the trial court, or to the appellate court, what conclusion the Land Commission reached regarding the parcel at issue. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

When a case pending in the trial division is an appeal from the Chuuk Land Commission, the procedure followed will, where appropriate, be analogous to the procedure usually used for appeals – the FSM Rules of Appellate Procedure. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 474-75 (Chk. 2004).

Appellate briefs are deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. This is an appropriate procedure to follow in an analogous circumstance in the trial division when it is considering an appeal. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 475 (Chk. 2004).

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 636 (Kos. 2004).

By failing to respond to Social Security's motion in limine that seeks to preclude the plaintiff from adducing any further evidence on appeal beyond that which is part of the record of proceedings before the Social Security Board, the plaintiff has not shown that there were reasonable grounds for failure to adduce competent, material, and substantial evidence before the Board and that this evidence should be (but is not) part of the record of the proceedings, and thus the motion will be granted. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 637 (Kos. 2004).

When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact to be forwarded to the President for his final review. If, after the President completes his final review, any party believes such action is necessary and appropriate, the party may file a motion to reinstitute the judicial proceedings. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 54-55 (Pon. 2004).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 152 (Kos. 2005).

Although, it would have been desirable for the claimant to have undergone vision testing as contemplated by the Board, the question under 53 F.S.M.C. 708 is whether there are now facts of record, supported by competent, material, and substantial evidence, sufficient for the findings of the Board to be deemed conclusive and when on a review of the record, the court finds that there is sufficient evidence in the record to deny the disability claim, it will affirm the Board's final decision in its entirety. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 153 (Kos. 2005).

An appeal from an administrative agency must be started within the established statutory time period.

This has the salutary effect of permitting resolution by the administrative agency, which may either satisfy the aggrieved party or address his concerns, thus conserving scarce judicial resources. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

The Kosrae State Court, in reviewing Land Commission appeals, considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, the court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 419-20 (Kos. S. Ct. Tr. 2005).

Whether the Land Commission properly considered certain evidence is an issue that the Kosrae State Court may properly consider under its standard of review, and if the appellant should prevail, it can order a remand. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the Land Commission has not followed statutory notice requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the determination of ownership as void and remand to Kosrae Land Court for further proceedings. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the plaintiffs have not shown that the Land Commission committed an error of law or that its findings lacked a substantial factual basis, the court will accept the Land Commission's finding that no part of the tower is on the plaintiffs' property. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

In reviewing a Land Commission decision, the Kosrae State Court considers whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues, and has reasonably assessed the evidence presented. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The proper standard for judicial review of agency (including Land Commission) decisions is that the reviewing court shall declare unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

The clearly erroneous standard is met either when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

Since the trial court stated that it was using a "clearly erroneous" standard of review on the Land Commission's findings, it would have had to examine, as one of the three possible ways to satisfy the clearly erroneous standard, whether the Land Commission decision was supported by substantial evidence

in the record, the standard that the statute requires. Thus, although it may not have correctly named the standard, the trial court did use the proper standard of review as part of its review. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When the matter is remanded to the trial court for it to rule on whether the lineage members consented or acquiesced to the sale of the land in question and if the trial court is unable to determine whether the requisite consent or acquiescence was shown in the Land Commission proceeding or determines that the record is inadequate to make that determination, the trial court shall then remand the matter to the Land Commission for it to make further findings of fact on whether such consent or acquiescence or ratification was made. The Land Commission may rely on the record and transcript and may take further evidence if it is necessary to make the inquiry. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

The Chuuk Constitution provides that the Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law, and the constitutional provision is implemented by a similar statutory provision. These general provisions about appeals from agency decisions would carry weight if other, specific constitutional provisions did not, or do not, apply. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

By statute, appeals from determinations of ownership by the Land Commission are treated and effected in the same manner as an appeal from the Chuuk State Supreme Court in a civil action. Thus, the Chuuk Rules of Appellate Procedure are the rules to be followed in appeals from Land Commission determinations. Liwis v. Rudolph, 15 FSM R. 245, 248 (Chk. S. Ct. Tr. 2007).

When the appellants have wholly failed to comply with the proper procedure and the court, their continuing failure to comply with the court's orders justifies dismissing their appeal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

Where the appellants took no action beyond filing their notice of appeal on October 17, 2001, there is good ground to dismiss the appeal because an appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date of oral argument and for filing appellant's opening brief, that stated that failure to do so would be ground for dismissal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

When the appellants took no action beyond filing their October 17, 2001 notice of appeal; when a November 19, 2003 order placed on the appellants the responsibility for ordering and obtaining a transcript of the Land Commission proceedings; when the November 19, 2003 order required the appellants to comply with the Appellate Procedure Rules 10 and 11 no later than December 19, 2003; when the appellants had every opportunity to comply with the November 19, 2003 order since the Land Commission transcript had been transmitted to the court on October 24, 2001, and was available for them to order and obtain after that date; when a March 28, 2007 order restated the appellants' obligation to comply with the November 19, 2003 order; when, at a April 2, 2007 status conference, the appellants were reminded of their obligation to comply with the November 19, 2003 order; when a May 16, 2007 order scheduling the submission of briefs and setting the hearing date on the appeal was based on both parties' agreement at the April 2, 2007 status conference; and when the appellants did not comply with the May 16, 2007 order and wholly failed to file a brief for their appeal and did not request an extension of time to file their brief, their appeal will be dismissed. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

The Chuuk State Supreme Court's authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. Liwis v. Rudolph, 15 FSM R. 245, 250 (Chk. S. Ct. Tr. 2007).

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court. The reviewing court shall hold unlawful and set aside agency actions and decisions

found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

When a second rescheduling gave the importers and any third-party witnesses more than 30 days to make travel and other arrangements to appear at the hearing and was done with the express agreement of the importers' counsel, the importers were provided sufficient opportunity to present their case and the FSM's refusal to reschedule the hearing for a third time was not arbitrary, capricious, or an abuse of discretion. Ruben v. FSM, 15 FSM R. 508, 515 (Pon. 2008).

An agency action must be set aside when the action was without substantial compliance with the procedures required by law. Ruben v. FSM, 15 FSM R. 508, 516 (Pon. 2008).

When a letter does not set forth the agency's required findings of fact, it does not qualify as a full written statement of the hearing officer's findings of fact and his decision, and in the absence of a full written statement of findings of fact and an explanation of how the hearing officer arrived at his decision, the court has no reasonable basis upon which to review the agency action. Because the agency failed to substantially comply with the procedural requirement, the court will set aside its administrative action. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

Although a hearing officer has the discretion to decide which recording method to use – stenographic or recording machine – the hearing officer does not have the discretion to altogether fail to make a record of the hearing and its failure to substantially comply with this procedural requirement is yet another reason an agency action must be set aside. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

When an agency failed to substantially comply with the procedures required by law through the hearing officer's failure to prepare a full written statement of his findings of fact and his decision and the agency's failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

When there are discrepancies in the evidence, which result in a dispute of material facts, the court will decline an invitation to conduct a *de novo* review and conclude the matter by summary judgment. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

Under the common law rule known as the doctrine of primary jurisdiction, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the doctrine of primary jurisdiction in the hope that by remanding matters to an administrative body, the administrative determination will obviate the need for further court action or will make possible a more informed and precise determination by the court. Ruben v. FSM, 15 FSM R. 508, 518 (Pon. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are

certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

A claims denial made before the due date to submit supporting documents is arbitrary and capricious and will be vacated by the court and remanded for further proceedings. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

A person adversely affected or aggrieved by a final administrative decision is entitled to judicial review of that decision in the Kosrae State Court which shall conduct a de novo trial of the matter; which shall decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action; and which may receive in evidence any or all of the record from the administrative hearing that is stipulated by the parties. Although the court holds a new trial, the agency action is entitled to at least some deference regardless of the substantive grounds for the appeal and will not be set aside it unless it is 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. A plaintiff generally has the burden of proving their case and thus, a plaintiff challenging an administrative decision must prove it meets one of the five criteria before the decision will be held unlawful and set aside. Palsis v. Kosrae, 16 FSM R. 297, 305, 313 (Kos. S. Ct. Tr. 2009).

Since the court is required to set aside agency action if unwarranted by the facts, the court must also consider the additional evidence submitted at the trial de novo. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

If the agency abused its discretion, or acted arbitrarily or capriciously, then the employee dismissal should be set aside. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

The standard is that a dismissal can occur if it is done for the good of the public service and the court will set aside the agency decision if it finds that the decision was arbitrary, capricious, and abuse of discretion or that the decision was unwarranted by the facts. When, in analyzing the facts, the court finds that each complaint and factor as a reason for dismissal alone does not rise to the level that would allow a management official to terminate an employee, but when the culmination of all of the factors and complaints does rise to a level where dismissal was a viable option and at the management official's discretion, the good of the public service was served by her dismissal since the health care industry is vital to the Kosrae community and nurses affect the well being of all citizens of Kosrae. Palsis v. Kosrae, 16 FSM R. 297, 314-15 (Kos. S. Ct. Tr. 2009).

Since, in an election contest appeal, the Chuuk State Supreme Court appellate division is statutorily

required to conduct a trial instead of the usual appellate proceeding and since the Election Law itself does not prescribe rules of procedure, the court has, when necessary, followed procedures analogous to those in the Civil Procedure Rules. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

Matters of statutory interpretation are issues of law that the court reviews de novo. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest appeal in the Chuuk State Supreme Court appellate division, the court will hold a trial on an issue of fact. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

When the appellants dispute the Election Commission's authority to nullify the results of a municipal mayoral election and reschedule the election, the appellants are not contesting the results of any election, especially since an appellant was the first election's declared winner; rather, the appellants dispute the state election commission's authority to nullify the first election's results and order a new election. Since the Election Law does not contemplate Appellate Division jurisdiction over disputes that arise outside the timeframe set by section 127 and since the appellants are not appealing from an election commission decision on an election complaint that was filed in compliance with section 127, the appellate court has no jurisdiction over the matter pursuant to sections 130 and 131 of the Election Law, which are the only provisions in the Election Law that provide for original jurisdiction over election matters in the appellate division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542-43 (Chk. S. Ct. App. 2009).

When there were no valid certificates of title for the land at the time of the Land Commission decision, the decision was a determination from which any party aggrieved thereby had 120 days to appeal, and, as such, the Chuuk State Supreme Court's trial division could exercise review jurisdiction over a timely appeal from that Land Commission decision, and the appellate division could exercise review jurisdiction over a timely appeal from the trial division review decision. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

The issuance of a certificate of title is generally not appealable, but since the Land Commission is not authorized to issue certificates of title until after the 120-day appeal period has passed or until after an appeal has been duly taken and decided, certificates of title issued before then are prematurely issued and are thus invalid and may be canceled. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

It would have been futile for Chuuk public service system employees, who were forced to resign in December 2002 because they wished to be candidates in the 2003 election, to pursue their administrative remedies before proceeding to court. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director's decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

When the statute subjects the finality of the Director's decision to judicial appeal, and when it directs that judicial appeals of the Director's order or decision must be made to the Pohnpei Supreme Court trial division within 15 days of the date of the decision or order, the statute creates a statutory obligation to appeal a decision to Pohnpei Supreme Court, and, as the statutory law governing the administrative review of labor contracts disputes, it is a necessary part of the administrative process. Smith v. Nimea, 17 FSM R. 125, 130-31 (Pon. 2010).

If the court were to take the plaintiff at his word that November 26, 2010 is the date of the demand for an immigration hearing, that 17 F.S.M.C. 109(4) obliges the court to view December 26, 2010 as the effective date of rejection, and that 51 F.S.M.C. 165 is now applicable, the court must deny his administrative appeal of the rejection because he filed his motion 15 days after December 26, 2010 and, under 51 F.S.M.C. 165(1), he had to make the appeal within 10 days following the date of the effective rejection. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

A party cannot file a civil action in anticipation of an adverse final agency decision and expect, without more, that that civil action works as an administrative appeal of the later-issued final agency decision. In order for a party to include an administrative appeal in a preexisting civil action, he must amend or request leave of court to amend his pleadings. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

Under both state and national law, the plaintiff's claims for wrongful termination and unpaid wages are not property before the FSM Supreme Court when, under state law, the plaintiff is either statutorily barred from asserting his claims for unpaid wages, overtime and wrongful termination due to his failure to appeal the Director's decision or if the Director was not the proper "Chief" of PL&MD, he is barred by the statute of limitations from further pursuing his claims for his failure to request administrative relief within six years of his employment's termination and when, under national law, he has failed to make a proper and timely appeal, which would have been to file a new civil action or request leave to amend his complaint by March 4, 2005. Smith v. Nimea, 17 FSM R. 333, 338 (Pon. 2011).

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

Disciplinary actions of government employees are not subject to judicial review until the administrative remedies have been exhausted and are not subject to such review thereafter except on the grounds of violation of law or regulation or of denial of due process or of equal protection of the laws. Poll v. Victor, 18 FSM R. 235, 238 (Pon. 2012).

Under Title 52, when the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory, and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation justifying termination has occurred. The court is thus required to uphold the President's findings of fact if there is substantial evidence in the record to support them. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

A finding of fact that is unsupported by substantial evidence is "clearly erroneous." A court determines that a finding is "clearly erroneous" when, although there is some evidence to support it, the reviewing court

examines all of the evidence and is left with the definite and firm conviction that a mistake has been committed. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

The court will limit itself to reviewing the ad hoc committee's decision and not deal with the issue of job abandonment when the committee's decision is affirmed since there is no need for a review of a further ground for the employee's termination. Additionally, the employee was accorded his right to appeal and did so. If he was terminated for job abandonment he would have no right to appeal. Poll v. Victor, 18 FSM R. 235, 241 n.5 (Pon. 2012).

When the court has found substantial evidence in the record to support all three grounds for an employee's termination and is not left with the definite and firm conviction that a mistake has been committed, no mistake was committed by the ad hoc committee's findings and recommendation, and the President's affirmance. Poll v. Victor, 18 FSM R. 235, 243 (Pon. 2012).

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties but not a disciplinary action. Grievances are not disciplinary actions and Title 18 does not provide any limitations on the Kosrae State Court's review of grievances or grievance appeals although the Kosrae State Court does not have jurisdiction to review grievances of employees who do not first comply with the required administrative procedure. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Where Kosrae does not argue that it offered certain evidence that the trial court improperly excluded, it cannot complain that all the evidence before the Director was not before the trial court when that court held a trial at which Kosrae would have had the opportunity to submit whatever evidence it thought relevant. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Kosrae's contention that the plaintiffs could not use the public service system appeals process because they were contract employees should mean that they could (or had to) file a court suit to obtain relief but if, Kosrae contends that they never became vice-principals, then they remained elementary school teachers and were thus public service system employees eligible to use the appeals process. Kosrae's reasoning is circular and leads nowhere. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The contention that there was not substantial evidence in the administrative record to support the trial court decision is baseless when the trial court judgment was on the merits after a trial de novo. Kosrae v. Edwin, 18 FSM R. 507, 513-14 (App. 2013).

Courts must afford considerable weight to an agency's construction of a statute that it administers when Congress has not directly addressed the precise question at issue, but when the legislative intent is clear and unambiguous, that is the end of the matter. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77-78 (Pon. 2013).

When the matter was already in the FSM Supreme Court before the employee-plaintiff sought a stay of the FSM court proceeding so that he could pursue state administrative relief, the employee-plaintiff could have appealed the adverse state administrative decision back to the FSM Supreme Court from the state administrative proceeding. But since he sought such relief and sought the court's permission, he should abide by the state administrative result when he did not appeal the administrative decision to either the Pohnpei Supreme Court or (back) to the FSM Supreme Court. His employer thus has the right to raise as a defense that the administrative decision is final on the issues it covered and that those issues can no longer be litigated in the FSM Supreme Court. Smith v. Nimea, 19 FSM R. 163, 170 (App. 2013).

Failure to timely appeal an agency decision is either jurisdictional or may be raised as an affirmative defense depending on the statute. Smith v. Nimea, 19 FSM R. 163, 170 (App. 2013).

Since an employee who abandons his position does not have the right to an administrative appeal, a court reviewing an agency decision to terminate a plaintiff's employment for reason of abandonment will be

unable to limit its role to reviewing factual findings developed during an administrative appeal. A court evaluating the merits of an abandonment claim must instead conduct a trial *de novo* to determine whether there is substantial evidence to support an agency decision to terminate a plaintiff's employment for reason of abandonment. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

In reviewing a government employee's termination under Title 52, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

Under Title 52, since the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation of the kind justifying termination has occurred. The statute evinces a clear congressional intent that the courts avoid serving as finders of fact. When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact. Manuel v. FSM, 19 FSM R. 382, 386-87 (Pon. 2014).

When a discharged employee was denied an opportunity to engage in the administrative review process, the court is left without a record to review, and therefore the government's decision to terminate the plaintiff's employment on the grounds of unsatisfactory performance is not supported by substantial evidence in the record. Manuel v. FSM, 19 FSM R. 382, 387 (Pon. 2014).

The court's role is not to serve as a finder of fact substituting its judgment for that of the ad hoc committee and the President. Rather, the court's role is to determine whether the administrative review process was conducted in accordance with statutory guidelines and in a manner that protects the plaintiff's right to due process. Manuel v. FSM, 19 FSM R. 382, 387 n.2 (Pon. 2014).

If the government wants to terminate an employee for unsatisfactory job performance, it must follow the procedures established in the National Public Service System Act and accompanying regulations, including providing the employee with notice of his right to file an administrative appeal. If, after an administrative appeal, the employee is terminated for unsatisfactory performance then the employee may appeal to the FSM Supreme Court, and the court will evaluate the administrative appeal's record to determine if the decision to terminate the employee for unsatisfactory job performance is supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 387 n.3 (Pon. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

By statute, the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission is limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When a statute calls for judicial review but does not prescribe the standard to be employed, courts look to the Administrative Procedures Act for guidance. Those provisions, however, do not apply to the extent

that those statutes explicitly limit judicial review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 553-54 (Pon. 2014).

17 F.S.M.C. 111(1) explicitly limits judicial review, but that limitation must be understood as a limitation on when a judicial review is appropriate. A request for judicial review may be made only by a person adversely affected or aggrieved by a final decision. 17 F.S.M.C. 111(2) does not limit judicial review to the administrative record because the statute explicitly calls for a trial "de novo." GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.1 (Pon. 2014).

The Administrative Procedures Act broadly applies to all agency actions unless explicitly limited by a Congressional statute. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.2 (Pon. 2014).

Title 17, which codifies the Administrative Procedures Act, applies to challenges of administrative decisions raised under Title 54, which codifies the tax law. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

The FSM Supreme Court must conduct a de novo trial of the administrative tax appeal, and must decide all relevant questions of law and fact. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 555 (Pon. 2014).

A de novo judicial review in the administrative law context is a term of art, and generally the court reviews the record with the presumption that the facts contained therein are correct. Thus, the court gives deference to the agency's prior decision and the challenger must show to a "preponderance" of the evidence that the agency was wrong. The challenger, however, may introduce any additional evidence into the judicial record, as well as any portion, or all of the administrative record for consideration. Ultimately, the agency record remains the focal point of the review, and often a full retrial is not necessary, under the de novo standard. Alternatively, under the doctrine of primary jurisdiction, the court may remand the fact finding omission to the administrative agency before conducting its judicial review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 555-56 (Pon. 2014).

A request for a judicial review of an administrative decision regarding the tax code is appropriately filed in the Supreme Court trial division. Since there are no express statutory limitations on the admission of additional evidence or limitations of the court's subject matter, the Administrative Procedures Act applies, and the court will conduct a de novo review of the decision. Thus, all discovery requests must be honored. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

While it is a matter of some concern, whether the Land Commission will be able to decide the case in a timely manner because of certain vacancies on the Commission, it is not a ground on which the appellate court can base its decision whether to remand to the Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Conclusory statements in the Board's resolution terminating the Executive Director present a difficulty because it gives the court no record to review so that the court can only guess at what formed the basis for the Board's conclusions. The court generally will not conduct a trial de novo to review an agency action. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When an agency action gives the court no record to review, the better course in most instances, and the most likely course of action is that the matter would be remanded to the administrative agency – in this

case, the Board of Education – for it to give the terminated employee notice of which of her actions and omissions it considers might be grounds for her removal and to give her an opportunity to respond and explain or justify or rebut the allegations against her before it votes on whether to remove her. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The trial court's disposition of a Social Security appeal on the record is final, subject to review by the appellate division. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

As a corollary to the exhaustion of remedies doctrine, the courts have created the doctrine of primary jurisdiction. This doctrine should not be confused with the exhaustion of remedies, but the goals of the two are the same. Primary jurisdiction is a doctrine of common law, wholly court-made, that is designed to guide a court in determining whether and when it should refrain from or postpone the exercise of its own jurisdiction so that an agency may first answer some question presented. The primary jurisdiction doctrine arose in recognition of the need for an orderly coordination between the functions of court and agency in securing the objectives of their often overlapping competency as agencies and courts often have concurrent jurisdiction. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The primary jurisdiction doctrine arises when a claim is properly cognizable in court but contains some issue within the special competence of an administrative agency. Under the primary jurisdiction doctrine, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the primary jurisdiction doctrine in the hope that by remanding matters to an administrative body, the administrative determination will obviate the need for further court action or will make more possible a more informed and precise determination by the court. Under this doctrine, referral of the issue to the administrative agency does not deprive the court of jurisdiction; it has the discretion either to retain jurisdiction or to dismiss the case without prejudice. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at the plaintiff's election, but public policy nevertheless requires that the

matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The public policy reasons for requiring that a matter be first placed within the administrative body's competency include the uniformity and consistency in the regulation of business entrusted to a particular agency are secured and the judiciary's limited functions of review are more rationally exercised by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure. Although wrongful termination claims rarely involve complex or technical issues that are outside of the court's competence, policy reasons also include avoiding conflict, indications of legislative intent, and other factors, and there are many policy reasons to abstain even when administrators lack identifiable expertise because the purpose is simply to promote the uniform application of the law and a proper relationship between the agencies and the judiciary. Ramirez v. College of Micronesia, 20 FSM R. 254, 262-63 (Pon. 2015).

When the court's jurisdiction has been limited by the exhaustion of remedies doctrine, the court can only hear a petition for review of the agency action and the plaintiff can only argue that the agency action does not stand up under the proper administrative standard of review, which may be extremely limited according to the prescribed standard for review. But under the primary jurisdiction doctrine, the plaintiff can argue that the agency action cannot stand up under a petition, or request a de novo trial on the common law claim which can be decided in a way that leads to a result different from that asserted by the agency since the plaintiff is not bound by the standards of review which often require the court to apply a heightened level of deference to the agency's decisions. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Even though, under the primary jurisdiction doctrine, petitioners can bring a separate common law claim, they must usually complete the agency procedure first before the court will entertain it. To do otherwise would interfere with the administrative process and undermine the particular advantages of the agency decision-making process that can generally resolve disputes in a less cumbersome and less expensive manner than is normally encountered at a trial in court. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

An aggrieved College of Micronesia employee's failure to appeal an adverse decision to the Board of Regents within the specified time limit, a required administrative step, is deemed as acceptance of the decision. Thus, when the aggrieved employee did not request an appeal before the Board, he failed to complete the administrative process, and thereby accepted the adverse committee decision. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

All College of Micronesia disputes must be brought before its administrative body, as a court of first instance, before it will be heard by this court, and, under the primary jurisdiction doctrine, the administrative processes created by that agency must ordinarily be completed before the court will entertain either a petition for review or an independent common law complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 264-65 (Pon. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when the person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence, and if the court so concludes, then the findings are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the appellate division. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These APA provisions apply to all agency action unless Congress by law provides otherwise and they apply to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015).

A reviewing court must hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272-73 (Pon. 2015).

When the Social Security Board's final order denying the plaintiff benefits because of remarriage rests on findings of fact that are supported by competent, material, and substantial evidence and does not violate 17 F.S.M.C. 111(3)(b), its decision will be affirmed. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

When the summary that was submitted indicates the testimonies that were given and recorded and is an adequate account of the hearing, and when the plaintiff does not point to any discrepancy in the summary or dispute any of its content to show that what is presented to the court as the record is insufficient, the court finds, based on the hearing officer's discretion under 17 F.S.M.C. 109(5), and a review what was provided, that the submitted summary is sufficient to constitute the record. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

The national government has decided, by statute, that it will defend its interests in an action for judicial review of a tax assessment through its Secretary of Finance, who will be the named defendant. The deletion of other parties as named defendants therefore seems proper. Fuji Enterprises v. Jacob, 20 FSM

R. 279, 281 (Pon. 2015).

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Declaratory judgment is the least intrusive judicial remedy. Usually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance. Notably, under the arbitrary and capricious standard, as required by the Public Service System Act, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

When the plaintiff has in good faith requested the resumption of the administrative process and the agency has verbally denied that request, the court may grant relief to the extent that the plaintiff requests declaratory relief requiring the administrative proceedings' resumption, but to the extent that the plaintiff has requested further declaratory relief regarding the validity of her termination, or the legality of a settlement offer, the court cannot grant that relief because that determination is within the administrative agency's exclusive jurisdiction and it is inappropriate for the court to unnecessarily encroach on the administrative domain. Eperiam v. FSM, 20 FSM R. 351, 356-57 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition must be served on the Board, by service on its secretary or other designated agent, and thereupon the Board must certify and file in court a copy of the record upon which the order was entered. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to Social Security Administration appeals because no part of the Social Security Act provides otherwise. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

A Social Security benefit is any retirement (old age), disability, dependent's, survivor's, or other insurance benefit prescribed in the Act. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 n.2 (Pon. 2016).

Parties who appeal decisions of the Social Security Board may enter additional evidence for the court's consideration. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

An appeal of an administrative agency decision can only be reviewed on the grounds of violation of law or regulation or denial of due process or of equal protection of the laws. Solomon v. FSM, 20 FSM R. 396,

400-01 (Pon. 2016).

Absent sufficient factual affirmations to buttress the relevant claim, coupled with the plaintiff's failure to denote what portion of the relevant agency decision was flawed, the defendants cannot be expected to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

The FSM Supreme Court's review of an agency decision is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusions that a violation of the kind justifying the termination has occurred. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning; and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals since no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Parties who appeal Social Security Board decisions are allowed to enter additional evidence for the court's consideration. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

Since, by statute, the findings of the Social Security Board as to the facts, if supported by competent, material, and substantial evidence, are conclusive, the statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. 8Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 n.2 (Yap 2016).

If a public employee does not prevail on his grievance, then he could have sought judicial review of the decision within the applicable six-year statute of limitations, but when the employee received a decision in his favor, the statute of limitations was immediately suspended and the State's own inaction thereafter cannot be used to run the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations does not to continue to run against a state employee when a favorable decision was rendered to him. To come to such a conclusion would mean any agency could immunize itself from judicial review simply by extending delay for six years or until the statute of limitations has run. Therefore, the statute of limitations was suspended when the favorable decision was rendered on

December 12, 2001 until the January 22, 2015 decision to overturn the first determination, and thus a petition for writ of mandamus filed in Kosrae State Court on April 1, 2015 was, as a result of the tolled period, well within the six-year limitations period. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

– Rules and Regulations

In general, to the extent that the Financial Management Regulations are consistent with the Financial Management Act, such uniform standards and procedures serve to prevent misappropriation and expenditures in excess of budgetary allowances. Mackenzie v. Tuuth, 5 FSM R. 78, 85 (Pon. 1991).

A Financial Management Regulation that bears no reasonable relationship to the fiscal accounting and management objectives of the Financial Management Act is in excess of the statutory authority granted to the Secretary of Finance. Mackenzie v. Tuuth, 5 FSM R. 78, 86-87 (Pon. 1991).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v. FSM, 5 FSM R. 375, 377 (App. 1992).

Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 F.S.M.C. 301-02. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 69 (Pon. 1993).

A regulation cannot impermissibly extend the reach of the statute that authorizes it. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

It is an impermissible extension of the reach of the statute for the executive service regulation to define abandonment of public office as absent without authorization for two weeks. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

Lack of structure in a statute can be remedied by agency regulations that support, rather than distort, the statutory language of the legislature. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

Generally, the validity of a regulation depends on whether the administrative agency had the power to adopt the particular regulation. The regulation must be within the matter covered by the enabling statute. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

A regulation, valid when promulgated, becomes invalid upon the later enactment of another statute which is in conflict with the regulation. However, an administrative regulation will not be considered as having been impliedly invalidated by a subsequent act of the legislature unless the regulation and the later law are irreconcilable, clearly repugnant and inconsistent that they cannot have concurrent operation. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

Administrative regulations that are inconsistent or out of harmony with the statute or that conflict with the statute are invalid or void, and the court not only may, but it is their obligation to strike down such regulations. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

From June 1997 when Kos. S.L. No. 6-131 became law to February 1998 when new PSS regulations were adopted, there was no administrative appeals process for grievances, which void raises substantial due process concerns under the FSM and Kosrae Constitutions. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

Regulations do not come into effect when they have not been filed with the Registrar of Corporations. Regulations cannot extend or limit the reach of the statute that authorizes it. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae State Code § 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When the state has held a hearing and solicited comments before adopting the regulations and when the defects the plaintiffs complain of in the regulations are not ripe for court decision and are of the type that are more properly addressed through state administrative action, the injury is a speculative one, especially when the plaintiffs have not demonstrated any attempt to apply for a license under the regulations. If the plaintiffs apply for a license and are denied, they may pursue remedies through the state administrative procedures act Nagata v. Pohnpei, 11 FSM R. 417, 418 (Pon. 2003).

Proposed regulations, that have not been adopted, do not have the force of law. Mackwelung v. Robert, 12 FSM R. 161, 162 (Kos. S. Ct. Tr. 2003).

The Financial Management Regulations, effective June 14, 1999, apply to the obligation and disbursement of funds from a lump sum appropriation for the purpose of funding health, education, infrastructure and other public projects. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

The Financial Management Regulations apply to the expenditure, obligation, and disbursement of funds. These Regulations were promulgated by the Secretary of Finance pursuant to statutory authority and have the force and effect of law. Under the statutes and regulations, funds cannot be used for any purpose other than for which they were allotted, and the Project Control Document is a legally binding document which sets forth the purposes for which the allotted funds must be used. FSM v. Fritz, 12 FSM R. 602, 604 (Chk. 2004).

A former Secretary of Finance's testimony as to his current understanding of the legal effect and the meaning of certain regulations can only be given little or no weight since it does not qualify as satisfactory "legislative history." The regulations speak for themselves. FSM v. Fritz, 12 FSM R. 602, 604 (Chk. 2004).

The Project Control Document is a legally binding document that sets forth the purposes for which the allotted funds must be used and the regulations prohibit the use of funds for a purpose other than for which they are allotted. Moses v. FSM, 14 FSM R. 341, 343 & n.3 (App. 2006).

The Financial Management Regulations promulgated by the Secretary of Finance pursuant to statutory authority have the force and effect of law. Moses v. FSM, 14 FSM R. 341, 343 n.3 (App. 2006).

When a regulation is clear and unambiguous that all port fees and charges are due and owing must be paid within thirty days of the port authority's demand and the word "demand," which the court will construe in accordance with common usage, means to claim as one's due, to require, to request for payment of debt or amount due, to ask with authority, claim or challenge as due, or to ask as by right, the port authority could satisfy the demand requirement by simply making a written request for payment, which could take the form of an invoice or letter. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 485 (Pon. 2006).

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. FSM v. Koshin 31, 16 FSM R. 15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The transponder-on violation in the Administrative Penalties Regulations is a violation of a condition of a fishing access agreement under the APRs' Violation Penalty section. Violation of an access agreement is something for which no specific penalty is provided under Title 24, and which falls within the catch-all provision of Section 920, and may be subject to administrative penalties. FSM v. Koshin 31, 16 FSM R. 15, 21-22 (Pon. 2008).

A public service system employee's claim or disagreement over the employee's pay, working conditions, or status is a grievance for which the Truk Public Service System Act requires that regulations prescribe a system for hearing. The Truk Public Service Regulations provide for a Truk Public Service Grievance System that covers any employment matter of concern or dissatisfaction to an eligible employee. The regulations contain two grievance procedures, an informal grievance procedure, and a formal grievance procedure. An employee must show evidence of having pursued the employee's grievance informally before the employee can utilize the formal grievance procedure. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it and an unconstitutional statute may not be redeemed by voluntary administrative action. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 161 (Chk. 2010).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Trust Territory Code Title 17, section 4(1) prescribes the procedure an administrative agency must follow before it adopts a rule or regulation. Chuuk State Law No. 2-94-06, section 2-17 prescribes the procedure that should be followed once the Chuuk Health Care Plan's Board has decided to adopt a regulation so that the regulation becomes valid and takes effect. Since these two state law provisions do not conflict, it is entirely likely that the Chuuk Legislature, when it enacted the Chuuk Health Care Plan Act, intended that the notice and comment provision of the Administrative Procedure Act would also be followed by the Plan's Board before adopting a regulation to be presented to the Governor for approval. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 (Chk. 2011).

Neither the FSM nor the Chuuk Constitutions require prior public notice before adopting a regulation.

This is because as a general rule notice and hearing are not a constitutional requirement in the rule-making process or in legislation by administrative agencies. Prior public notice requirements for regulations are statutory. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.2 (Chk. 2011).

Agency rules adopted pursuant to a statutory rule-making proceeding are presumed valid and the burden is on the challenging party to establish the rules' invalidity by demonstrating that the rule-making agency adopted the rules in an unconstitutional manner, or exceeded its statutory authority, or otherwise acted in manner contrary to the statutory requirements. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 (Chk. 2011).

Generally, a regulation's validity depends on whether the administrative agency had the power to adopt the particular regulation, that is, whether the regulation was within the matter covered by the enabling statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.3 (Chk. 2011).

When a defendant challenging a regulation's validity has not established or made a substantial showing that the regulation was invalid because the agency acted in a manner contrary to statutory requirements in adopting the regulation, the agency is entitled to summary judgment that the defendant employer ought to have been remitting to the agency the employees' and the employer's health insurance contributions as required by the regulation and the employer's cross motion for summary judgment will be denied. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 541 (Chk. 2011).

A regulation can neither contradict nor extend the reach of statutory law. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 n.2 (Pon. 2012).

Regulations, even if promulgated by the Secretary, must not exceed or limit the statute's reach. Thus, any promulgated regulation would have taken into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. The court will do likewise. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 626 (Yap 2013).

A regulation that conflicts with unambiguous statutes will not benefit from the deference the court shows to an agency interpreting its own enabling statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 75 (Pon. 2013).

Statutory construction must prevail over any contrary regulation since regulations that conflict with a statute are impermissible extensions of the statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Regulations have the force and effect of law. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

Regulatory language is interpreted the same way statutory language is. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

When a regulation's plain language applies only to toilet facilities that might contaminate sources of water that could be used for drinking purposes – in other words, fresh water and when the term "body of water" might be construed as covering the lagoon but in light of the regulation's clear intent to preserve potable water sources, it must be read as a catchall phrase meant to cover any other potential potable water source, the regulation does not apply to a toilet on a berm in a salt-water lagoon. Berman v. Pohnpei, 19 FSM R. 111, 116-17 (App. 2013).

When a law's plain language is ambiguous, a court may look to the law's purpose – the evil that it was intended to remedy – to interpret the law. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When a regulation's purpose – the evil that the regulation is designed to prevent – is the contamination of drinking water, it would not apply to a case where it might be proven that the privy on the berm leaks pollutants into the lagoon as the lagoon is not a possible potable water source since it is salt water and that

evil is not covered by the regulation. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Regulatory language is interpreted in the same way that statutory language is. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

While it is true in construction of statues, thus also of regulations, that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. The fact that a word "may" is used is not conclusive, since it is well settled that permissive words may be interpreted as mandatory where such construction is necessary to effectuate legislative intent. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

The discretion an aggrieved College of Micronesia employee has when the grievance has not been resolved informally is the choice to further pursue the grievance through the formal procedure or to abandon the grievance altogether. It is not the discretion to either pursue the formal grievance procedure or to go directly to court. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

By statute, the College of Micronesia must adopt a personnel system which provides that the College's employees are not, for any purpose, employees of any FSM government or its political subdivisions, and which must guarantee that every College official, faculty member, and other employee is entitled to hold his or her position during good behavior, subject to suspension, demotion, layoff, or dismissal only as provided in the College's personnel regulations. Ramirez v. College of Micronesia, 20 FSM R. 254, 265-66 (Pon. 2015).

Regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Since, if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, Social Security would be vulnerable to abuse, exploitation, and misconduct. Therefore, the Social Security regulations that limit when benefits can be paid to adoptees are not *ultra vires*. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

The regulations that cover termination of shipping articles, do not afford the seaman the right to an administrative hearing before termination. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

– Statutory Construction

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision-maker reviews the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. 52 F.S.M.C. 156. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

The National Public Service System Act fixes two conditions for a national government employee's termination. Responsible officials must be persuaded that: 1) there is "cause," that is, the employee has acted wrongfully, justifying disciplinary action; and 2) the proposed action will serve "the good of the public service." 52 F.S.M.C. 151-157. Suldan v. FSM (II), 1 FSM R. 339, 353 (Pon. 1983).

The National Public Service System Act's provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. Suldan v. FSM (II), 1 FSM R. 339, 353-54 (Pon. 1983).

The highest management official must base his final decision on a national government employee's termination under section 156 of the National Public Service System Act, upon the information presented at the ad hoc committee hearing and no other information. Suldan v. FSM (II), 1 FSM R. 339, 359-60 (Pon. 1983).

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

Even if some deference is accorded to the legal judgment of an agency, the courts must remain the final authority on issues of statutory construction. Olter v. National Election Comm'r, 3 FSM R. 123, 132 (App. 1987).

Any court deference to another decision-maker on a legal question is a departure from the norm and may occur only when there is sound reason. Olter v. National Election Comm'r, 3 FSM R. 123, 132, 134 (App. 1987).

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the statute's meaning. Michelsen v. FSM, 3 FSM R. 416, 421 (Pon. 1988).

In reviewing the statutory interpretation of an agency authorized to implement the particular statute, the court should not defer but is under an affirmative duty to make its own determination as to the meaning of

the statute when there is no indication that Congress intended the court to defer, when no particular scientific or other expertise is required for administration of the act, and when the interpretation does not involve mere routine operating decisions, but instead represents a fundamental policy decision having constitutional implications. Carlos v. FSM, 4 FSM R. 17, 25 (App. 1989).

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae State Code § 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When there is an apparent, or even putative, conflict between a statute of general application like the Administrative Procedures Act, and a statute directed toward a particular agency, the more specific provisions will apply. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director's decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

The statute requiring that the ad hoc committee hearing be conducted within the 15 calendar days of the receipt of the employee's appeal is directory and not mandatory, as the statute does not prescribe what happens if the prescribed time period is not adhered to. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

Statutory construction must prevail over any contrary regulation since regulations that conflict with a statute are impermissible extensions of the statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Courts must afford considerable weight to an agency's construction of a statute that it administers when Congress has not directly addressed the precise question at issue, but when the legislative intent is clear and unambiguous, that is the end of the matter. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77-78 (Pon. 2013).

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

ADMIRALTY

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish United States federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59 (Truk 1989).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

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).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 599 (Pon. 1994).

The grant of admiralty and maritime jurisdiction to the national courts was intended to assist in the development of a uniform body of maritime law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel's owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. FSM v. M.T. HL Achiever (I), 7 FSM R. 221, 222-23 (Chk. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the

constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 460 n.2 (App. 1996).

The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 464-65 (App. 1996).

Proceedings concerning the arrest or release of a vessel should take place in the civil action in which it is a defendant, not in a related criminal case. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.4, 475 n.5 (App. 1996).

Generally, to complete a court's jurisdiction in an in rem action, the res must be seized and be under the court's control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is to be exercised (or its substitute, *e.g*., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court

may make concerning it. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

In maritime law an allision is the sudden impact of a vessel with a stationary object such as an anchored vessel or a pier or a submerged reef. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 n.1 (Yap 2003).

An allision is the sudden impact of a vessel with a stationary object such as an anchored vessel, a pier, or a submerged reef. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 n.1 (Yap 2004).

Whenever an asserted maritime counterclaim arises out of the same transaction or occurrence as the original maritime action, and the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security in the usual amount and form to respond in damages set forth in such counterclaim, unless the court, for cause shown, directs otherwise. Proceedings on the original claim shall be stayed until such security is given, unless the court otherwise directs. FSM v. Kana Maru No. 1, 14 FSM R. 365, 366-67 (Chk. 2006).

When the defendants have not yet given any security for the plaintiff's benefit no countersecurity bond will be required for a fishing boat's counterclaims because the defendants have not complied with Rule E(6)(d)'s prerequisite for countersecurity. Countersecurity will only be required of a plaintiff when there are counterclaims against any plaintiff for whose benefit security has been given. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

If there is a conflict between the Supplemental Admiralty and Maritime Rules and Title 24, then Title 24 must prevail because the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute and since Congress has the authority to amend or create procedural rules by statute (and when Congress has enacted a procedural rule, it is valid) and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 n.1 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a

defendant's counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The FSM Supreme Court has exclusive and original subject matter jurisdiction over a case in admiralty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

In generally accepted admiralty practice, a letter of undertaking becomes the substitute *res* for a vessel in lieu of the vessel's seizure, providing the court with *in rem* subject matter jurisdiction. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

General maritime law has long recognized causes of action in maritime tort for damages resulting from groundings and oil spills. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v.

Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

A master of a vessel that is within FSM waters must render assistance to any person who is found at sea and in distress or in danger of being lost at sea if this assistance can be rendered without endangering the vessel, crew or passengers. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

When the unit of prosecution for 19 F.S.M.C. 425, as reflected in the legislative intent, is that there be a punishment for each violation of the law, as it relates to each person who is found at sea and who is in distress or capable of being lost at sea, but is denied assistance, the double jeopardy clause of the FSM Constitution, which parallels the double jeopardy clause of the United States Constitution, is not violated when a defendant, who commits the single act of failing to render assistance to a boat carrying four people – all of whom are purportedly in distress – is charged with four counts of violating the 19 F.S.M.C. 425. FSM v. Zhang Xiaohui, 14 FSM R. 602, 617 (Pon. 2007).

A proctor in admiralty is a lawyer engaged in admiralty practice. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 n.6 (Yap 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts when the FSM Supreme Court has not previously construed an FSM Supplemental Admiralty and Maritime Rule which is identical or similar to a U.S. counterpart, the court may consult U.S. sources construing the U.S. rule. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635 n.1 (Yap 2009).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

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).

FSM admiralty law recognizes a cause of action for damages to coral reefs and marine resources caused by marine vessels. The elements of maritime negligence are: 1) the existence of a duty requiring conformance to a certain standard of conduct in order to protect others against unreasonable risks; 2) a breach of that duty by engaging in conduct that falls below the standard of conduct (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury (often called "proximate cause"); and 4) an actual loss or injury to another party. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use

and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The owners were liable under a nuisance cause of action when its vessels substantially interfered with the plaintiffs' use and enjoyment of the affected reef both when the vessels were present and afterward because of the resulting damage. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When the nuisance damages are the same (or lesser portion of) those awarded for maritime negligence, no further damages will be awarded for the nuisance cause of action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

It is the long-established rule in admiralty cases that omissions and deficiencies in pleadings may be supplied and errors and mistakes in practice in matters of substance, as well as of form may be corrected at any stage of the proceedings for the furtherance of justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

When an FSM court has not previously construed an FSM supplemental and maritime rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 n.5 (Yap 2012).

The FSM Rules of Civil Procedure apply in *in rem* admiralty cases except to the extent they are inconsistent with the FSM Supplemental Rules for Certain Admiralty and Maritime Claims, in which case the supplemental rules govern. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 n.2 (Yap 2012).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

With admiralty jurisdiction comes the application of substantive admiralty law. Adams Bros. Corp. v.

SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

Complaints in Admiralty Rule B, C, and D actions must be verified upon oath or solemn affirmation by a party or by an authorized officer of a corporate party but complaints in other in personam admiralty actions against natural and juridical persons do not have to be verified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

While the court must first look to FSM sources of law and not begin with a review of other courts' cases when the court has not previously construed an FSM supplemental admiralty and maritime rule that is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.2 (Yap 2013).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation's officer or attorney and with due deference to the Constitution's Judicial Guidance Clause and the FSM's geographical configuration, a class representative's verification of the complaint was sufficient compliance with Supplemental Rule C's requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

Lightering or lighterage is the loading and unloading of goods between a ship and a smaller vessel, called a lighter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.3 (Yap 2013).

The statutory fines in 19 F.S.M.C. 908(2); 19 F.S.M.C. 912, do not state a claim for which private parties can be granted relief because those fines are payable only to the FSM national government and then only if imposed as part of a sentence after a conviction in a criminal case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The FSM Supreme Court trial division has original and exclusive jurisdiction over admiralty and maritime cases. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

– Salvage

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal,

destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

When a wrecked vessel is an obstruction or danger to commerce or shipping, the Receiver of Wreck may require any owner to raise, remove or destroy the vessel, and if the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver deducts any and all expenses incurred from the sale of the wreck and pays the proceeds to the persons entitled to them. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In the event of a forced sale of a stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs of such removal will be paid out of the sale proceeds, before all other claims secured by a maritime lien on the vessel. If the forced sale proceeds are inadequate, then the Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing, or destroying the vessel, which are not recovered from the sale proceeds. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In order for the Receiver of Wreck, and thus the FSM, to recover salvage or rendering harmless damages, the FSM must have actually incurred those expenses. The damages that the FSM is entitled to because its Secretary of Transportation is the Receiver of Wreck are for results obtained after the Receiver has taken charge of a wreck. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The salvage statute's purpose is to reward those whose efforts preserve property or protect the marine environment or both. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The Receiver or the FSM has not attained the status of salvor when it has not yet salvaged anything or tried to salvage anything. A salvor is a person who saves a vessel and its cargo from danger or loss; a person entitled to salvage. Salvage, in this sense, is the compensation allowed to a person who, having no duty to do so, helps save a ship or its cargo. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

The FSM Supreme Court has exclusive jurisdiction over admiralty and maritime matters, which include claims relating to salvage, claims for towage, and ancillary matters of admiralty and maritime jurisdiction.

Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract to assist in salvage of a vessel is a salvage contract. More than one party can simultaneously engage in the salvage of the same vessel. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In contract salvage, the salvor acts to save maritime property after entering into an agreement to use "best efforts" to do so. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In a salvage contract case, the FSM statute concerning salvage contracts is applicable regardless of whether any party pled the statute because statutory FSM salvage contract law applies to all salvage contracts performed in the FSM. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract was formed by a salvor's June 16, 2007 e-mail offer and the insurer's June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor's acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

It is generally true that salvage contracts may be oral. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor's failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract's essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

An essential element of any modern salvage contract is not only the rescue of maritime property in peril but also the protection of the marine environment. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A salvage contract is, by its terms, divisible when the parties have apportioned the entire $325,000 contract price into various components and activities within the scope of work, each assigned a specific part of the overall contract price. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor's material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract's scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator.

Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The applicable statute of limitations for a salvage contract bars any recovery after the two-year period statutory period. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

A cause of action on a salvage contract accrues and the statute of limitations period starts to run on the day on which the salvage operations are terminated or the vessel and any part of the cargo is delivered to a safe port. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The two-year statute of limitations in 19 F.S.M.C. 928 applies only to salvage contracts and does not apply to a contract between a salvor and the insurer that is not a salvage contract but is instead a contract of guaranty or a surety or to answer for the liability of another and which may be subject to the six-year statute of limitations for contracts in general. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

The FSM Secretary of Transportation and Communications is designated by statute as the Receiver of wreck and when any vessel is wrecked, stranded or in distress, the Receiver may take command of all persons present, assign duties, issue directions, requisition assistance, and demand the use of any nearby vehicle or equipment, if necessary to preserve the vessel, the cargo, and lives. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

When the Receiver takes possession of wreck, he must cause a description of the wreck to be: 1) broadcast on at least one radio station in each state; 2) published in the local newspaper, if any; 3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital. This is notice to the public or the world. Notice to the owner, captain, and crew is another matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The defendant's receipt of documents about the arrest of its vessel and its participation in the arrest proceedings before the court did not, regardless of the effect of those proceedings on the class plaintiffs' claims against certain defendants, constitute notice to anyone that the FSM Receiver had taken possession of the stranded vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Even if the 19 F.S.M.C. 907 notice was never given to the public, actual notice to the owner is sufficient for a claim against the owner. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When a party has had actual notice of the receivership it cannot complain that the notice is defective because it did not also get notice by publication or constructive notice that, if given, might still never come to the party's attention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The $100,000 penalty in 19 F.S.M.C. 908(2) is a criminal penalty – punishment – that can be imposed only upon a criminal conviction and cannot be imposed in a civil case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Civil liability may be imposed under 19 F.S.M.C. 905 and the duty to deliver items removed from a wreck is imposed under 19 F.S.M.C. 903(3). It cannot be imposed under 19 F.S.M.C. 908(2) or 19

F.S.M.C. 912. Those are provisions for criminal liability and must be sought through a criminal prosecution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When the defendants have had actual notice that the FSM is the Receiver of their stranded vessel notwithstanding the lack of statutory notice to the public that would be necessary to enforce the receivership against the general public; when the extent to which defendants may avoid civil liability because they did not have actual notice of the receivership until after the refloating attempts is question on the merits left for another day as is whether liability is avoided or lessened because material was removed, as part of the government permitted and supervised attempt to refloat and to make it easier to refloat the stranded vessel and to lessen the chance of pollution of the marine environment, the defendants' motion to dismiss will be denied. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 59 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result shall create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

The statutorily created Receiver of Wreck has certain powers and duties and the Receiver of Wreck may delegate all or any authority and responsibility as Receiver to the relevant state authority but class plaintiffs are not a relevant state authority. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

No statute authorizes the Secretary of Transportation and Communications to delegate his statutory duties as Receiver of Wreck to private persons, let alone named and unnamed persons in a plaintiff class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

Salvage operations undertaken within the FSM which have had a useful result create the right to reward. The criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

FSM salvage contract law applies to all salvage contracts performed in the FSM regardless of whether

any party pled the statute. This is because it is well established that with admiralty jurisdiction comes the application of substantive admiralty law. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

Substantive admiralty law, whether FSM statute or general maritime law, rewards a successful salvage, not a salvage that has not yet occurred. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

The court cannot award, disguised as costs, what are damages for an unsuccessful salvage contract cause of action that was neither pled nor tried. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

– Seamen

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, § 6(a). Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Cases involving claims for wages by seamen are maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A case involving the hazardous duty pay claims of fifty-eight port operators and seamen employed by the defendants on Federated States of Micronesia Class III vessels comes before the FSM Supreme Court on the court's exclusive jurisdiction in admiralty and maritime cases. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

The owner or master of a vessel must enter into a written employment agreement (called shipping articles) with each and every seaman employed on board. Gilmete v. Peckalibe, 20 FSM R. 444, 447 n.1 (Pon. 2016).

A seaman's contract claim against the owner of the vessel on which he served falls within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Gilmete v. Peckalibe, 20 FSM R. 444, 448 & n.3 (Pon. 2016).

Cases involving claims for wages by seamen are maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

A seaman is a person (including the master and officers) engaged or employed in any capacity on board a vessel other than a pilot, supercargo, or a person temporarily employed on board the vessel while it is in port, and shipping articles are the written employment contract between a vessel's owner or master and a seaman to be employed on board, setting forth the terms and conditions of employment. Gilmete v. Peckalibe, 20 FSM R. 444, 448-49 n.5 (Pon. 2016).

Under 19 F.S.M.C. 606(4), shipping articles are limited to a period of no longer than one year. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

Since the FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts, and injuries, it has jurisdiction over a seaman's claims for breach of contract and negligence. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

When a person's employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

A seaman employed by the FSM is a contract employee and therefore does not fall under the purview of Title 52 and would not be required to have his grievance reviewed at the administrative level before filing suit in the FSM Supreme Court. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

The regulations that cover termination of shipping articles, do not afford the seaman the right to an administrative hearing before termination. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, § 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

– Ships

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

In an admiraltry case, the court must review the verified complaint and supporting papers to determine whether the conditions for an in rem action appear to exist. If the court finds a sufficient basis, it may then issue an order authorizing the clerk to issue an order authorizing the vessel's arrest. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

The Pohnpei Port Authority has the express statutory authority to set as a condition of a vessel's use of port facilities that a vessel's account for port charges is kept current. Pohnpei Port Auth. v. Ehsa, 16 FSM

R. 11, 13 (Pon. 2008).

Whenever process in rem is issued, the execution of such process shall be stayed, or the property released, on the giving of security. "On the giving of security" refers to the situation where the defendant has "given security to respond in damages," and refers to the bond or other security posted to obtain the release of the property in the first instance, not the property itself. The fact that the FSM is holding the seized vessel does not mean that security has been given within the meaning of Admiralty Rule E(6)(d). FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The FSM National Police must arrange for adequate safekeeping, which may include placing keepers on or near the arrested vessel, and the FSM Police may procure insurance to protect itself from liability assumed in arresting and holding the vessel. Providing for the vessel's adequate safekeeping is mandatory, while arranging to place keepers on board and for insurance is discretionary. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

Interlocutory sales of arrested vessels are allowed 1) if the property that has been attached is perishable or liable to injury by being detained in custody pending the action, or 2) if the expense of keeping the property is excessive or disproportionate, or 3) if there is unreasonable delay in securing the release of the property. The plaintiffs need only demonstrate that one of these three conditions is present to justify the vessels' interlocutory sale. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 634-35 (Yap 2009).

Where there is no evidence that the vessels are currently deteriorating or liable to injury and where the defendants have unsuccessfully sought the vessels' release through a letter of undertaking and made a good faith attempt to modify the proposed letter to satisfy the plaintiffs' and the court's concerns but were unable to, resulting in a court denial, the four months' delay in the vessels' release cannot yet be considered unreasonable, especially when the defendants, not the plaintiffs, are currently bearing the expenses of keeping the vessels. The request for an interlocutory sale of the arrested vessels will thus be denied without prejudice, but, if the vessels' release is not obtained, there will come a time when the delay will be considered unreasonable and the vessels' interlocutory sale could be ordered. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635-36 (Yap 2009).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Service of process on a defendant vessel is usually effected by the vessel's arrest unless a substitute security, such as a letter of undertaking, has been arranged. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When a vessel has been abandoned and is situated such that the taking of actual possession is impracticable, the FSM national police must execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession

or the person's agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 n.3 (Yap 2012).

The FSM Supreme Court cannot exercise jurisdiction over any vessel unless that *in rem* defendant has been validly arrested in the FSM and brought under the court's actual control or under its constructive control through the provision of a substitute security. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

When a vessel has been arrested in rem in a parallel civil proceeding but is not restrained in the criminal matter, the government's request that the vessel be seized as evidence in the criminal case, and not for forfeiture, is an unnecessary restriction to establish that the vessel was as an instrumentality used in a crime. FSM v. Kimura, 19 FSM R. 617, 620 (Pon. 2014).

Under the Supplemental Rules for Certain Admiralty and Maritime Claims, a prompt post seizure hearing may be requested by "any person" claiming an interest in the vessel. At this hearing the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with the rules, and the property must be released upon giving of a security and, if the parties are unable to stipulate to the amount and nature of the security, the court shall fix the principal sum. FSM v. Kimura, 19 FSM R. 617, 620 n.8 (Pon. 2014).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

There are a variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

– Ships – Charter

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise

charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. Yap v. M/V Cecilia I, 13 FSM R. 403, 408-09 (Yap 2005).

The owner's fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charter's beginning; subsequent to delivery the vessel's seaworthiness is the charterer's responsibility unless otherwise stated. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The demise charterer's basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

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).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

In an admiralty case, when the suit is against a vessel or other property, the proper venue is the state within which the ship, goods, or other thing involved can be seized. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

– Ships – Liability

A vessel owner's right to seek a limitation of its liability is created by an FSM statute, and as the vessel's owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel's grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

One purpose of the limitation procedure is to avoid a multiplicity of law suits and have all claims against the vessel determined in a single action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 n.3 (Yap 2012).

Although Supplemental Admiralty and Maritime Rule F(1) sets the limitation fund amount at "a sum equal to the amount or value of the owner's interest in the vessel and pending freight," the FSM statute sets the amount as "the sum of such amounts set out in regulations as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund." The regulations referred to are those promulgated by the Secretary of the Department of Transportation and Communications implementing Title 19, chapter 11 and taking into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312-13 n.4 (Yap 2012).

A vessel owner's right to limitation may be asserted in either one of two ways – the owner can file a complaint for limitation as a new and independent action or the owner may raise and assert it as an affirmative defense in a suit against the owner or the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

When a shipowner chooses to assert its limitation rights by a filing in a pending case, the court should consider it as the owner's motion for leave to amend its answer so as to assert the affirmative defense of statutory limitation of liability because a thing is what it is regardless of what someone chooses to label its filing. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A limitation of liability defense can only be pled if a Limitation of Liability Fund is "constituted" by either by depositing the sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the court and it must be freely transferrable. People of Eauripik ex rel.

Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

The limitation of liability defense was enacted as a part of the National Maritime Act and under Congress's powers to regulate shipping and navigation and foreign and interstate commerce. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Even in the absence of regulations, Congress's intent in providing for a limitation of liability defense is clear – the Limitation of Liability Fund is to be calculated by the London Convention method and not based on the "value of the owner's interest in the vessel and pending freight." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

"Pending freight" or "freight pending" is a term of art. "Freight" refers to the compensation paid to a carrier for transporting goods. The term "freight pending," for purposes of constituting a limitation of liability fund, means the total earnings of the vessel for the voyage, whether for carriage of passengers or goods. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 n.2 (Yap 2013).

When the rules provide that the limitation of liability fund must include in additional sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes' provisions as amended, or together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes' provisions as amended, the court does not have to decide whether the statute conflicts with the rule and will calculate the limitation of liability fund amount according to the London Convention method. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

A limitation of liability fund must be constituted before the limitation defense can be effective. The London Convention calculation should be used along with the interest mandated by statute, which will be computed at the legal 9% rate. Once this amount is deposited with the court in cash or an irrevocable letter of credit, the limitation of liability defense may then be asserted. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539-40 (Yap 2013).

A plaintiff's claims as "fairly stated" are not a basis to calculate the amount at which a limitation of liability fund should be set. This should be obvious from the principle that the fund involves a limitation of liability while a plaintiff's claim as "fairly stated" does not involve any limitation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

In the trial of a limitation proceeding, the burden of proof is divided between the parties, and there is a two-step analysis. The claimants must prove that the destruction or loss was caused by negligence or the vessel's unseaworthiness. The burden then shifts to the shipowner to demonstrate that he comes within the statutory limitation conditions: that there was no design, neglect, privity or knowledge on his part. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

The privity and knowledge issue is the favored method to deny the limitations defense. The determination of whether the shipowner has established a lack of privity and knowledge of the fault involves a delicately balanced inquiry. Privity and knowledge exist where the owner has actual knowledge, or could have or should have obtained the necessary information by reasonable inquiry or inspection. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Plaintiffs must first prove that their loss was caused by negligence or the vessel's unseaworthiness. Next, they have the opportunity to prove that their claims are not the sort of claim to which the limitation of liability defense can be applied. But even if their claims are subject to the limitation of liability defense, that still does not mean that the defense will succeed because the burden then shifts to the shipowner to

demonstrate that there was no design, neglect, privity or knowledge on the shipowner's part. If the shipowner cannot demonstrate that, then the limitation of liability defense will not be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Regulations, even if promulgated by the Secretary, must not exceed or limit the statute's reach. Thus, any promulgated regulation would have taken into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. The court will do likewise. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 626 (Yap 2013).

No statutory language can be interpreted to require or encourage the inclusion of cultural damages in the limitation of liability fund calculation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

For vessels under 2,000 gross tons the limitation of liability fund amount is 1,000,000 units of account. A unit of account is the Special Drawing Right as defined by the International Monetary Fund. This amount is expected to be raised to 1,510,000 units of account in June 2015. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 630 (Yap 2013).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

– Ships – Maritime Liens

Supplies and service that are necessaries when provided to a vessel give rise to maritime liens. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessaries, not on the contractual relation. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessaries must rely on the credit of the vessel. General maritime law presumes that a provider of necessaries relies on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to the amount and never funded cannot overcome the presumption that a supplier of necessaries relied on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

A claim against the owner, demise charterer, manager or operator of a registered vessel in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel may be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

A registered vessel may be arrested in respect of default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and when sufficient evidence is provided to the Supreme Court to warrant a registered vessel's arrest, the court may issue an order for the vessel's arrest. Thus a vessel may be arrested when sufficient evidence is provided to the court that there has been a default in payments secured by a maritime lien, but when there is no present obligation for payment, there can be no default. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

When the statute provides that a vessel may be arrested for default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and that the Registrar shall upon the request of any person record in the register notice of such person's claim to a lien on a registered vessel, supported by credible documentary evidence and when the statute further provides that where a vessel has caused personal injury giving rise to a claim which creates a maritime lien against the vessel, the lien holder may require the Registrar to record the lien against the vessel in the Register. But when the plaintiffs have not shown that their maritime lien has been recorded, this is a ground for denying the request for an arrest warrant for the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99-100 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

The release of vessels from arrest is governed by Supplemental Admiralty and Maritime Rule E(6), and if the parties are unable to stipulate to the amount and nature of the security, the court must fix the principal sum of the bond at an amount sufficient to cover the plaintiff's claim fairly stated with accrued interest. If the plaintiffs' claim "fairly stated" exceeds the vessels' value, the amount of the bond needed to release the vessels would be limited to the vessels' value, and, if the vessels' value exceeds that of the plaintiffs' claim, the bond amount would be the amount of the plaintiffs' claim "fairly stated" with accrued interest. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545 (Yap 2009).

For a court to determine the amount of a plaintiff's claim "fairly stated," the court can consider affidavits and look behind the complaint to ascertain the amount actually in controversy. For a plaintiff's claim to be "fairly stated," it must only be arguable. This is because "any ultimate recovery against the *res* itself [the vessel] is limited to the amount of the bond; therefore it is prudent to err on the high side. Thus, in making a preliminary assessment of plaintiff's damages claim, the court should be satisfied that the plaintiff's claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545-46 (Yap 2009).

Factual disputes that a trial would resolve need not be resolved to set a bond for an arrested vessel; the court need only conclude that the plaintiffs' claims are not frivolous and are arguable. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When, without prejudging who will ultimately prevail and to what extent, the plaintiffs' claim appears arguable; the amount is "fairly stated" for the purpose of setting a bond for an arrested vessel. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546, 546 (Yap 2009).

Whenever security is taken for the release of an arrested vessel, the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 547 (Yap 2009).

– Ships – Mortgages

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 60 (Truk 1989).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner's debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional $100,000 over its registered amount would destroy the statutory scheme created by Congress and one of the goals of the ship registry system – that all ownership interests be recorded on the ship's Certificate of Registry, and would also hinder another purpose and goal – enhancing the ability of ship owners to obtain needed financing. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

AGENCY

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

A person can be criminally liable for the conduct of another if having a legal duty to prevent the commission of an offense, he fails to make proper effort to do so. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The acts of agents, illegal or otherwise, are the acts of the principal itself provided that those acts are in the ordinary course of the agent's business relationship with its principal because under accepted principles of agency law a principal is responsible for the criminal acts of its agents provided that those acts where committed in furtherance of the agents' business relationship with the principal. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212-13 (Pon. 1995).

The principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315-16 (Pon. 1995).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on behalf of the principal. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419 n.2 (App. 1996).

A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The existence of an agency relationship is not negated merely because the agent is named by someone other than the principal. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

A party may require another to appoint an agent as a condition to an agreement. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a fishing boat captain knows that he has caught fish and retained possession of fish while he had not maintained the required daily catch log in English that knowledge is attributable, under agency law principles, to the foreign fishing agreement party through which the boat was authorized. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91 (Pon. 1997).

A principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Agency relationships are based upon consent by one person that another shall act in his behalf and be subject to his control. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91-92 (Pon. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the

corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94-95 (Chk. 1997).

A principal is bound by, and liable for, the acts of its agent, if those acts are done with actual or apparent authority from the principal and are within the scope of the agent's employment. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Generally, a principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Agency relationships are based upon one person's consent that another shall act on his behalf and be subject to his control. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Acting for another is the act of an agent. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Someone acting on another's behalf is someone who is acting as an agent for that other. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

There is no authority by which an agent may be held liable to a third party for its principal's actions when they are not also the agent's own actions or when the agent has not expressly agreed to be liable for those actions. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the defendants provide documents signed by both Naiten and Linda Phillip showing them to be co-owners of the business; Kolonia Town municipal records showing that they were recorded as the business's co-owners for business license purposes; an affidavit concerning times that both had come in together to make the original insurance application and that later dealings with the business were always with Linda Phillip; and the rental agreement for the damaged pickup, which was signed by Linda Phillip as "company agent" and when the plaintiff offers no evidence, argument, or affidavit that Linda Phillip did not have authority to act as the business's agent in this regard, the court must conclude that there is no genuine issue of fact that Linda Phillip had the actual or apparent authority to act as agent concerning payment of the insurance premium. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is liable not just for his agent's expressly authorized acts and contracts, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When an agent had neither the actual nor the apparent authority to bind the principal to make rental payments since the principal did not give the agent actual authority to agree to rental payments for a cement mixer's use, and since the agent informed the plaintiffs that he would have to discuss their proposed rental amount with the principal, the agent did not have the apparent authority to agree to rental payments and bind the principal. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

A principal is bound by the acts of the agent that the agent performs with the principal's actual or apparent authority. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

When the defendants' local agent – prior to defendants' fishing activities on August 18th, 19th, and 20th – had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants' agent is imputed to the defendants under the law of agency. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei's approval was

also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

When a contract expressly provides that a party is responsible to the other party for its employees' acts, the party is contractually liable to the other for its employee's actions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

A principal is liable for the acts of his or her agent when acting under the principal's authority within the scope of the agent's employment. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

Employers are responsible for the actions of their employee under the law of agency, which binds the principal for the acts of the agent. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An agent is not relieved from responsibility for tortious conduct merely because he acted at the request, or even at the command or direction, of the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

Even as an insurance agency's employee, the employee had a duty not to cash premium checks without first confirming with the insurer that she had the authority to cash the checks. By failing to do so, the employee intentionally deprived the insurer of its property, and is thus liable for the conversion of the checks that she cashed while she was an the agency's employee. The employers and the employee are jointly and severally liable for the checks that the employee cashed during the time that the employers were acting as the insurer's general agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

By definition, the relationship between an agent and principal is a fiduciary one. Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

An agent is a fiduciary with respect to the matters within the scope of his agency. The very relationship implies that the principal has reposed some trust or confidence in the agent, and the agent or employee is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor's existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court's finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

A principal is certainly liable to a third party for the acts of its subagent and a subagent is liable to the principal for the subagent's own acts. But it would be odd indeed if an agent could instruct or authorize a subagent to do something and then escape all liability to the principal because the subagent, not the agent,

did the act. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Unless otherwise agreed, an agent is responsible to the principal for the conduct of a subagent with reference to the principal's affairs entrusted to the subagent, as the agent is for his own conduct; and as to other matters as a principal is for the conduct of an agent. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent who employs a subagent is the latter's principal and is responsible both to third persons and to his principal for the subagent's derelictions. Thus the agent is subject to liability to the principal for harm to the principal's property or business caused by the subagent's negligence or other wrong to the principal's interests. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

The agents were responsible to their principal for the subagent's derelictions or defalcations concerning the principal's premium checks. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Agency is the fiduciary relation which results from one person's manifestation of consent to another that the other shall act on his behalf and subject to his control, and consent by the other to so act, and fiduciary is defined as relating to or founded upon a trust or confidence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent is a fiduciary with respect to the matters within the scope of his agency and the agent is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since handling the principal's premium checks was within the scope of their agency and since the agents did not exercise the utmost good faith, loyalty, and honesty toward the principal when they were its agents because they did not immediately remit all premium checks to the principal, the agents breached the fiduciary duty they owed to the principal and were properly found liable under a breach of fiduciary duty theory. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

It is not logical that any individual would have apparent authority to cash a check with a corporate payee, especially a foreign corporation. The corporation's agents may have had apparent authority to perform a number of acts on the corporation's behalf, but cashing checks with the corporation as the payee was not one of them. One who pays out on such a check does so at his own peril. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to

25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

A principal is bound by and liable for the acts of its agent if done within the scope of this agent's employment. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 243-44 (Pon. 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

AGRICULTURE

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The Pohnpei stray livestock statute does not create any property rights in impounded stray pigs. It does not grant the person impounding the stray animal the right to hold on to that animal until he is compensated. To the contrary, the statute creates a right for the person impounding the stray animal to "just compensation for its keep from the owner." Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

The Pohnpei stray livestock statute does not authorize a person to hold onto stray pigs until he receives just compensation for the pigs' upkeep and it certainly does not create a lien for the value of any damaged crops. It does not authorize anyone to hold onto the pigs once the livestock's owner has been identified. Nor does it authorize compensation from the stray pigs' owner for any damage the pigs may have caused or any crops that may have been destroyed. The right to compensation for destroyed crops exists outside the statute. Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

The Pohnpei stray livestock statute requires that the impoundment of stray pigs be reported within three days. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

AMICUS CURIAE

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr.

Co., 7 FSM R. 520, 522 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

A state does not need either the parties' written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

Amicus curiae literally means friend of the court. An amicus is someone who is not a party to the lawsuit but who petitions the court or who is asked by the court to file a brief in the matter because that person has a strong interest in the subject matter. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

An amicus curiae gives the court information on some matter of law in respect to which the court is doubtful or calls the court's attention to a legal matter which has escaped or might escape the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae is a neutral provider of information or legal insight or has a partisan interest. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When a criminal contempt prosecution of an attorney regarding his relationship with his client is a matter of first impression in the Federated States of Micronesia and the court concludes that an amicus curiae's insight may benefit it in understanding the legal issues, a petition to appear as an amicus curiae will be granted. This appearance is limited to briefing legal issues. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

"Amicus curiae" literally means friend of the court. An amicus curiae is someone who is not a party to the lawsuit. An amicus curiae either petitions the court, or is asked by the court, to file a brief in the matter because the amicus has a strong interest in the subject matter that is pending before the court. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

An amicus curiae is expected to give the court information on some matter of law which the court may be doubtful upon, or calls the court's attention to a legal matter which has escaped, or might escape, the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae acts as a neutral provider of information or legal insight, or has a partisan interest in the outcome of the litigation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The amicus curiae's role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae's motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

APPELLATE REVIEW

An appeal at the early stage of development of FSM judicial systems is a significant event calling for relatively large expenditure of judiciary resources. In order to preserve and uphold the legitimate right of parties to appropriate appeals, the FSM Supreme Court must be vigilant and exercise its inherent powers to avoid unnecessary expenditure of resources for premature or unauthorized appeals. FSM v. Yal'Mad, 1 FSM R. 196, 197-98 (App. 1982).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. Jonas v. Trial Division, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless the FSM Supreme Court decision affects the Secretary of the Interior's ability to fulfill his responsibilities under Executive Order 11021. Jonas v. Trial Division, 1 FSM R. 322, 329 n.1 (App. 1983).

A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. The court, however, should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

The interest protected by having exact time limits is in preserving finality of judgments. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM R. 173, 188 (App. 1986).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

FSM Appellate Rule 26(b) gives the appellate court broad discretion to enlarge time upon a showing of good cause. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

When the language of an FSM appellate rule is nearly identical to a United States' counterpart, FSM courts will look to the United States federal courts for guidance in interpreting the rule. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Conducting trials de novo and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Where the appellant at oral argument contended that a grant of an interest in land was for an indefinite term and the court inquired of the appellant whether the grant was perpetual or forever the issue of whether a perpetual grant was for an indefinite term was fairly before the appellate court and could be decided by it even though the issue had not been briefed nor had the appellee urged it. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Failure to locate counsel to prosecute appeal or to attempt to proceed pro se may, after notice, be deemed a voluntary dismissal of an appeal. Palsis v. Talley, 7 FSM R. 380, 381 (App. 1996).

After a judgment has been appealed a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

When an appeal is taken from the trial court it is divested of authority to take any action except actions in aid of the appeal. This is a judge-made rule to avoid the confusion and inefficiency of putting the same

issue before two courts at the same time. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

An appellate court may affirm the decision of the trial court on different grounds. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

Where counsel have waived the issue of reliance damages and only argued specific performance at trial and on appeal the appellate court will leave the matter where counsel have placed it. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

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).

A civil case decided by the Chuuk State Supreme Court Appellate Division may be appealed to the FSM Supreme Court Appellate Division by writ of certiorari. Wainit v. Weno, 8 FSM R. 28, 29 (App. 1997).

Chuuk State Supreme Court appellate rules may be amended by statute. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

Although in the absence of an order directing final judgment any order or decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties, a trial court does not have the authority to vacate or amend the order from which an appeal is taken. Stinnett v. Weno, 8 FSM R. 142, 145 (Chk. 1997).

When there is an Appellate Rule 4(a)(1)(B) appeal from the grant of an injunction the trial court loses its power to vacate the order when the notices of appeal are filed. However, as with Rule 59(e) and 60(b) motions, the trial court may consider and deny the motion, or, if it were inclined to grant the motion, so indicate on the record so as to allow the movant an opportunity to request a remand from the appellate division so that it could proceed to grant the motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.2 (Chk. 1997).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a similar United States counterpart, we may look to U.S. practice for guidance. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants' petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

Sections 37 and 38(1) of the 1990 Chuuk State Judiciary Act preserve, just as the Chuuk Constitution does, the distinction between an "order" and a "decision." Specifically, a "decision" will be made by the entire appellate panel assigned to the case. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before final judgment below. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

When an FSM appellate rule has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.1 (App. 2000).

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).

When the issue in both appeals is identical, the cases may be consolidated for purposes of rendering an opinion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 136 (App. 2001).

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of hearing the appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 150 (Chk. S. Ct. App. 2001).

When a Chuuk Appellate Rule is similar to a U.S. Federal Rule of Appellate Procedure and the Chuuk State Supreme Court has not previously construed its rule, it may look to other FSM sources and then to U.S. sources for guidance. Wainit v. Weno, 10 FSM R. 601, 606 n.1 (Chk. S. Ct. App. 2002).

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).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a United States counterpart, the FSM Supreme Court may look to U.S. practice for guidance. Bualuay v. Rano, 11 FSM R. 139, 146 n.1 (App. 2002).

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).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S. Ct. App. 2002).

When an appellate court remands a case to the trial court on the ground that the lower court's findings are inadequate the reviewing court may require or recommend that the trial court take additional evidence. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 n.2 (App. 2003).

No appellee is forced to do anything in any appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellant must timely file a request for a transcript, or a statement of the issues, a designation of the appendix, and an opening brief, with an appendix. An appellant's failure to comply with these rules may subject its appeal to dismissal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellate court will first consider an appellant's due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the

court may choose to look to United States court decisions for guidance in interpreting the rule, but is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 439 (App. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the court may choose to look to United States court decisions for guidance in interpreting the rule, but it is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

Under the doctrine of *stare decisis,* once a point of law has been established by a court, that point of law will be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

The court should not have to instruct attorneys that the court rules mean what they say. An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

While it is true in construction of rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

The court must first look to FSM sources of law, but when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 n.1 (App. 2006).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Wainit, 14 FSM R. 164, 168 n.1 (Chk. 2006).

Aggrieved parties have the right to appeal single-justice appellate orders to a full panel. This applies strictly to parties, not to justices. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A specific provision in the rules will control rather than a general rule to the extent that they conflict. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

If two rules conflict, the more recent expression of the sovereign's will (that is, the most recently enacted statute or rule) prevails over the earlier to the extent of the conflict. FSM v. Petewon, 14 FSM R. 463, 468 n.1 (Chk. 2006).

The civil procedure rules generally do not apply in the appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The appellate rules provide that in the interest of expediting decisions, or for other good cause shown, the court may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of the appellate rules in a particular case on a party's application or on its own motion and may order proceedings in accordance with its discretion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

Civil Rule 65 and the Civil Procedure Rules in general apply to civil proceedings in the trial division, not to appellate division proceedings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Generally, only attorneys admitted to the FSM Supreme Court can file papers in the appellate division. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

In a case that has been reversed and remanded a new trial may not be necessary when a complete

trial transcript was prepared for the appeal, but if the trial court deems it necessary, it may take further evidence. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

In instances where there is no FSM precedent, the appellate court may consider cases from other jurisdictions in the common law tradition. Walter v. FSM, 15 FSM R. 130, 131 (App. 2007).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 n.3 (App. 2007).

By statute, appeals from determinations of ownership by the Land Commission are treated and effected in the same manner as an appeal from the Chuuk State Supreme Court in a civil action. Thus, the Chuuk Rules of Appellate Procedure are the rules to be followed in appeals from Land Commission determinations. Liwis v. Rudolph, 15 FSM R. 245, 248 (Chk. S. Ct. Tr. 2007).

Once a notice of appeal is filed the appellants' options in pursuing their appeal, are: 1) they can order from the court clerk a transcript of such parts of the proceedings not in the file, as they deemed necessary; 2) if they intend to urge on appeal that a Land Commission finding or conclusion was unsupported by the evidence or was contrary to the evidence, they can include in the record a transcript of all evidence; and 3) if the appellants decide not to include the whole transcript on appeal, they should, within 10 days of the filing of the notice of appeal, file a statement of the issues they intend to present on appeal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

Although it is appropriate for the FSM Supreme Court to consider United States courts' decisions as guidance in interpreting a similar appellate rule, when that U.S. rule was extensively rewritten in 1998, it is appropriate to consider only those U.S. court decisions that interpret the rule before its 1998 rewriting. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364-65 (App. 2007).

An argument raised for the first time at appellate oral argument is improperly raised. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When the court has not had occasion to consider the standard of review for an appeal of an order denying bail pending trial under FSM Appellate Rule 9(a), the court may consider authorities from other jurisdictions in the common law tradition since FSM Appellate Rule 9(a) is similar to U.S. Appellate Rule 9(a). Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When the date for a party to do an act is within a prescribed period after service of a paper upon that party, Appellate Rule 26(c) permits six days to be added, but the Rule 26(c) enlargement only applies when the prescribed time period is triggered by and calculated from the service of a paper upon the party who may then act. The fact that notice is to be served by mail is not dispositive. The correct inquiry is whether the required actions must be performed within a prescribed period of filing or of service. If the act is to be taken after filing, the time for action begins to run from that date. If the act is to be taken after service, the Appellate Rule 26(c) extension applies. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 n.1 (App. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

In the absence of an order issued by the court upon a showing of special cause, the clerk of court may not accept papers for filing by facsimile, but the court may authorize the clerk of court to accept for filing a facsimile response when the appellant desires to submit a timely response for filing. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

Filing by facsimile might be accepted if the provisions of General Court Order 1990-1, § 2 are observed. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

When an FSM Appellate Procedure Rule is identical or similar to a U.S. counterpart and the court has not previously construed some aspect of the rule, it may look to U.S. sources for guidance. Kosrae v. Langu, 16 FSM R. 83, 87 n.1 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 n.4 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A norm of the interpretation of rules is that the specific provision prevails over the general provision. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

When an FSM court has not previously construed an FSM Appellate Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 n.4 (App. 2008).

In the interpretation of rules, the specific provision prevails over the general provision. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

An appellate court should not have to instruct counsel on the rules' requirements. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

It is proper for temporary justices, otherwise meeting the requirements of Chuuk Constitution Article VII, section 5(b), to constitute the full appellate panel and to preside over Chuuk State Supreme Court appeals if Chuuk State Supreme Court justices are disqualified or not readily available. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When the appellate court has not previously considered whether Appellate Rule 4(a) or 4(b) applies to a criminal contempt finding in a civil case and those FSM appellate procedure rules are identical or similar to U.S. counterparts, the court may consult U.S. sources for guidance in interpreting those rules. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 n.6 (App. 2011).

Rules are construed in a manner similar to the manner in which statutes are construed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

If the appellees wish the appellants to provide a bond necessary to ensure payment of costs on appeal, they must first apply to the court appealed from. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The Kosrae Rules of Appellate Procedure govern procedure in the Kosrae State Court trial division when considering an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.1 (App. 2013).

FSM Appellate Rules 3 and 4 govern how and when appeals are taken by the FSM Supreme Court appellate division. Ruben v. Chuuk, 18 FSM R. 604, 606 (App. 2013).

The court must first look to FSM sources of law, but when the court has not previously construed an

aspect of an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Ruben v. Chuuk, 18 FSM R. 637, 639 n.3 (Chk. 2013).

When, at the close of the petitioner's case-in-chief, the respondents move to dismiss the petitioner's case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

While the appellate court must first look to FSM sources of law rather than start with a review of other courts' cases, when it has not already construed an FSM appellate rule which is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123-24 n.1 (App. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

FSM Appellate Rule 21 is a nearly verbatim adoption of U.S. Federal Appellate Rule 21, and so special consideration should be given to United States decisions regarding application of Appellate Rule 21. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

The court must first look to FSM sources of law and circumstances, but when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Nena v. Saimon, 19 FSM R. 393, 395 n.1 (App. 2014).

The appellate panel's presiding justice may consider a bill of costs. A single justice's action may be reviewed by the court. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Although it must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 396, 398 n.1 (App. 2014).

The appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although the court must first look to FSM sources of law and circumstances, when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Andrew v. Heirs of Seymour, 19 FSM R.

451, 452 n.1 (App. 2014).

An appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452-53 (App. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

The absence of express authority in FSM appellate case law to consolidate similar, but not identical, appeals does not mean the court lacks the ability to do so when appropriate circumstances present themselves so long as it does not conflict with any rule or law. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389-90 (App. 2016).

Since appeals may be consolidated by order of the Supreme Court appellate division on its own motion or on a party's motion, or by stipulation of the parties to the several appeals, it is clear that the court exercises broad discretion in determining whether or not to consolidate cases. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

When common questions of fact pervade the trial case from which the three appeals all arose and when each appellate case shares at least one common issue, if not more, with at least one of the other cases, consolidation of the appeals is appropriate because addressing the several legal issues arising from the same facts and procedural history with commonality of parties in a single consolidated proceeding conserves judicial resources, reduces cost and delay, and expedites the disposition of the issues without sacrifice of justice and because consolidating the matters would further the interest of justice and ultimately promote judicial economy since the issues of law to be decided are closely interrelated in all three cases and since hearing the matter as three separate appeals would result in unnecessary duplicative efforts by the parties and the court. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

An appellate court does not sit to render decisions on abstract legal propositions or issue advisory opinions. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 513 (App. 2016).

– Briefs, Record, and Oral Argument

The appellant's tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant's brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Where the delay was only ten days, no prejudice to the appellant has been suggested, the appellant has not opposed the motion for extension of time and the court finds a substantial public interest in having the position of the government considered in the criminal appeal, the court may appropriately enlarge the time and permit late filing of the government's brief. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The date of notice from the clerk that the record is ready, not the filing of the Certification of Record, triggers the running of the due date of an appellant's brief. Federated Shipping Co. v. Ponape Transfer & Storage, 5 FSM R. 89, 91 (App. 1991).

It is within the court's discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party's efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

Prejudice to an appellee may be shown by failure of an appellant to file a notice of issues presented and contents of the appendix as required under FSM Appellate Rule 30(b). Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

The service on opposing counsel of a signed and dated copy of a brief filed with the appellate division, although not explicitly stated in FSM Appellate Rule 31(d), is a procedural requirement of the FSM Supreme Court. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

The requirement under FSM Appellate Rule 30(a) of an appendix is only waived at the court's discretion and by court order. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Parties to an appeal must reference properly and clearly in their briefs the parts of the record containing material in support of their arguments, and unless the court has waived an appendix under Appellate Rule 30(f), references should be to the appropriate pages of the appendix. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Facts asserted to excuse the filing of an appellate brief within the time prescribed must be proved. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

FSM Appellate Rule 28(a) requires, among other things, that arguments in an appellant's brief be supported by citations to authority; failure to provide such support will be deemed a waiver by appellant of the claims being argued. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 283 (App. 1993).

A motion to correct the record on appeal must first be made in the trial court before application to the appellate court. Berman v. Santos, 7 FSM R. 492, 493 (App. 1996).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by, or contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to that finding or conclusion. If the appellee then deems a transcript of other parts of the proceedings necessary, he must counter designate the additional parts the appellant should include in the record. If the appellant does not request such parts, the appellee may request the additional parts himself or move for a court order requiring the appellant to do so. Damarlane v. United States, 7 FSM R. 510, 512 (App. 1996).

An appellant must include in the appendix to its opening brief all relevant and essential portions of the record, including any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the court(s) below, but oral rulings are not required in the appendix if already contained in transcripts filed as a part of the record. The record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court. Damarlane v. United States, 7 FSM R. 510, 512-13 (App.

1996).

Appellants are responsible for presenting to the court a record sufficient to permit it to decide the issues raised on appeal, and one which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant has the primary responsibility for including in the record all necessary parts of the transcript, and the appellant cannot shift his responsibility to the appellee by the simple device of failing to discharge it himself. It is the appellant who must insure an adequate record, and if the record fails to demonstrate error, the appellant cannot prevail. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant's failure to include in the record relevant transcripts may be fatal to his appeal because when the appellants do not include evidence in the record, the presumption is that the evidence was sufficient to sustain the trial court's judgment. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Any appellant would be hard pressed to prove a finding of fact at trial was clearly erroneous without a transcript of the trial proceedings. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

A transcript of at least part of the trial court proceedings is generally necessary if the appeal involves issues of fact or evidence. Damarlane v. United States, 8 FSM R. 45, 53 n.6 (App. 1997).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When a transcript of the evidence in the Chuukese language has been on file for three years and the appellant has had access to the transcript for the purpose of prosecuting his appeal during the entire time and when nothing in the record indicates that the appellant requested an English language transcript a motion to enlarge time to file brief and to postpone oral argument on the ground that an English language transcript has not been received will be denied. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant's failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant's brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants' counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

Appellees' counsel's motion to continue oral argument because the appellees are unable to pay for a copy of the transcript may be denied when he made the same motion on the same ground during the previous appellate session one year earlier and the other parties oppose any further continuance. Sellem v. Maras, 9 FSM R. 36, 37-38 (Chk. S. Ct. App. 1999).

An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Rule 28(I) permits appellants to join in a single brief. Implicit in this rule is an appellant's right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

An appellant has a right to file its brief individually, and does not waive this right by joining the other appellants in earlier appeal procedures. Prejudice to an appellee from the resulting two briefs can be eliminated by seeking any necessary enlargement of time to file its responding briefs. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

It is the appellant's duty to prepare and file the appendix. But when the appellant has failed to prepare and file the appendix and the appellee instead does so, and the appellee prevails, the cost of producing copies of the appendix may be taxed in the appellee's favor. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.2 (App. 2000).

The appellate division has broad discretion to grant an extension of time to file a brief and appendix upon a showing of good cause. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

While it is true that in an attorney sanction appeal many items usually placed in an appendix are not relevant to the appeal, many are, such as the docket sheet or trial court's certified list, the notice of appeal, and the final order appealed from; and those items, and any other documents in the record to which the appellant wishes to draw particular attention, should be included in the appendix, but irrelevant items may be omitted. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An appellee who fails to file a brief will not be heard at oral argument except by the court's permission.

In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Although certain consequences flow from the failure to file a brief, appellees' attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney's failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal's dismissal. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

It is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appellant shall, not later than 10 days after the date of the appellate clerk's notice that the record is ready, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

When an appellant's 1996 brief was not filed with the court, but only lodged with the clerk and the appellant filed one in 1999, the appellant has filed only one brief in the appeal because papers merely "lodged" with the clerk, but not filed, are not part of the record, although the existence of the 1996 "lodged" brief is part of the record. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

If an appellee deems a transcript is needed when the appellant has declined to order one, the appellee may designate what transcript is needed and if the appellant does not order it, then the appellee may order it or seek an order requiring it. Wainit v. Weno, 10 FSM R. 601, 607 n.2 (Chk. S. Ct. App. 2002).

No transcript is needed when no facts are in dispute and the chronology of events is clear. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

When a justice's reason for denying an appellant's motions was clearly stated in his order, speculation about other possible reasons is pointless. Parties are entitled to rely on the justice's written order. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

While the court will not look favorably on anyone who attempts to manipulate type face in an attempt to circumvent the rules' intent, which is to place a reasonable limitation on submissions to the appellate

division and prevent the court from wasting time and resources, the court may decide not to strike a brief when there was no evidence the appellees' intentionally disregarded Appellate Rule 32(a) or that the appellant was prejudiced, but which, because of technological changes from typewriters to computers, technically exceeded the Rule's page limit. Panuelo v. Amayo, 11 FSM R. 205, 208-09 (App. 2002).

Good cause to enlarge time to file a reply brief may be found when the appellant's motion to strike the appellees' brief has not been resolved. Panuelo v. Amayo, 11 FSM R. 205, 209 (App. 2002).

A state does not need either the parties' written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellee may supplement the designation of the appendix, but if it does not, the appendix stands as designated by the appellant; and an appellee is also directed to file its brief within thirty days of service of the appellant's brief, but the sole consequence of not doing so is that the appellee will not be heard at oral argument except by permission of the court. The court, however, prefers full participation by appellees as the court, FSM jurisprudence, and the FSM bar usually benefit from a full presentation of all the relevant issues by all the interested parties. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 & n.3 (App. 2003).

Appellate briefs are deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. This is an appropriate procedure to follow in an analogous circumstance in the trial division when it is considering an appeal. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 475 (Chk. 2004).

The court reviewing a Land Court decision must have before it the full and complete record upon which the Land Court's final decision was based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

Since the amount of the attorney's fees owing to plaintiffs remained before the trial division at the time the appellate record ready certificate was issued, this does not mean that the record ready certificate's issuance was improper since an order awarding a specific amount of attorney's fees is a separate order that is not yet part of the appeal. Felix v. Adams, 13 FSM R. 28, 29 (App. 2004).

Regardless of whether a party who filed a notice of appeal is designated an appellant or cross-appellant, each appellant must discharge the duties imposed by Appellate Rule 10(b) and take any other action necessary to enable the clerk to assemble and transmit the record. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 n.1 (Pon. 2004).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely affect the appellant's power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant's burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Rule 30 requires an appellant to file an appendix with its brief which must contain relevant and essential portions of the record and specifies the exact documents that should be part of an appellant's appendix, including the trial court docket sheet, the notice of appeal, relevant portions of pleadings filed below, the judgment sought to be reviewed, and any portions of the transcript of proceedings below to be relied upon. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

Although Rule 30(f) provides for the possibility of hearing appeals without an appendix, that is by special order of the court only since an appendix is an essential element of an appellant's brief and the

requirement that it be included is not waiveable by appellant and only in limited circumstances at the court's discretion and by court order may it be waived. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

An appellant's failure to satisfy Rule 30's requirements can result in the of the appeal's dismissal. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

The parties are required to cite in their briefs to the record as included in the appendix or the record as a whole. The court take such citations to the record seriously. Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for error. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant neither filed an appendix nor made a single citation to the record in its brief and submitted nothing to the appellate court which even documented the trial court decision under review, such egregious omissions are evidence of negligence. These violations of procedural rules present problems with both the form and substance of appellate review when the appellant's assertions in its brief are utterly unsupported by proof of what the trial court did or did not do below. The appellate court should not be put in the position of having to take an appellant at its word. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant fails to provide a necessary appendix and that appendix is provided by an appellee and the appellee prevails, the cost of producing the appendix may be taxed in the appellee's favor. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant has provided certain portions of the trial transcript in its brief and as part of its appendix, but does not direct the court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous, it is not the court's responsibility to search the record for error. The parties' briefs must clearly identify those portions of the record which support their arguments. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When an appellant asserts that there was no evidence to support certain findings, but has not provided a full transcript, the court cannot make the determination that there was no evidence before the court to support these findings. A transcript setting forth all of the evidence relevant to the trial court's decision must be provided by the appellant if he is arguing on appeal that the trial court's findings lack evidentiary support. Otherwise the appellate court will be unable to identify any of the trial court's findings of fact as clearly erroneous. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When a full trial transcript is included in appellant's appendix, there is no reason why the cross-appellant should be required to also file an identical trial transcript. One complete trial transcript in the appellate file is sufficient. Two would be a waste of resources. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

The court may hear argument from the appellee if the appellant fails to appear at the time set for hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

Although Kosrae Appellate Rule 14(c) provides that if an appellant fails to file his brief within the time provided by the rule, or within time as extended by court order, an appellee may move for dismissal of the appeal and also that the court, on its own motion, may issue an order to show cause why the appeal should not be dismissed for appellant's failure to file a brief, under Kos. S.C. § 11.614(5), governing Land Court appeals, the State Court may refuse to allow oral argument by a party who fails to file a timely brief. Since the statute differs from the appellate rules and the statute specifically applies to appeals from Land Court, it governs over the general appellate rules and the court may exercise its discretion to allow oral argument by appellants from a Land Court decision who have not filed a brief. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 523 (Kos. S. Ct. Tr. 2007).

Any appellee may move to strike any document in the appellant's appendix on the ground that that document was not certified as part of the record on appeal. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

If a cross appeal is filed, the brief of the appellee must contain the issues and argument involved in the appellee's appeal as well as the answer to the appellant's brief and the appellant must prepare and file an appendix that contains the essential and relevant portions of the record. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

The court may shorten or enlarge the periods prescribed for the serving and filing of briefs and may also enlarge the time period for doing any act that is required or allowed under the rules. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

Within 30 days after service of the principal brief by the appellants/cross-appellees, the appellees/cross appellants must file their principal and response brief. That brief must comply with Appellate Rules 28(a) and (b), except that the brief need not include a statement of the case or a statement of the facts unless they are dissatisfied with the statement in the appellants' principal brief. In addition, their brief may not exceed a total of 100 pages in length, nor may the respective portions of the brief comprising the principal brief and response brief each exceed 50 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10-11 (App. 2007).

The appellants/cross-appellees must, within 30 days after service of the appellees/cross-appellants' principal and response brief, file their brief that responds to the principal brief in the cross appeal. Their brief must comply with Appellate Rule 28(b), except that it need not include a statement of the case or a statement of the facts unless it is dissatisfied with the appellees/cross-appellants' statement. In filing the brief, the appellants/cross-appellees may, in the same brief, reply to the appellees/cross-appellants' response brief. If a reply is made, the combined brief must also comply with Appellate Rule 28(c), and if a combined brief is filed, the brief may not exceed a total of 75 pages in length, with a further restriction being that the portion of the brief comprising the response brief must not exceed 50 pages in length while that portion of the brief comprising the reply cannot exceed 25 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

The appellees/cross-appellants may, within 14 days after service of the appellants/cross-appellees' response brief, file a reply. This reply brief must comply with Appellate Rule 28(c) and must be limited to the issues presented by the cross appeal. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

Parties who have been designated as the appellants in an appeal and cross-appeal for the purpose of complying with Appellate Rules 28, 30 and 31, must undertake the duty of preparing the appendix to the appellant's brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When, because the appellees were allowed to file an untimely brief, the court exercised its statutory discretion and ordered that they would not be allowed to present oral argument, and when the appellants' counsel requested a continuance and claimed that the appellees' counsel agreed to the continuance, but appellees' counsel opposed the continuance and appeared at the time set for argument stating he had not agreed and that the appellants had not shown sufficient grounds for a continuance and then requested that appellants' counsel not be allowed to present oral argument, the court ordered that the case would be decided on the briefs and record and that neither party would be allowed to present oral argument. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 143-44 (Kos. S. Ct. Tr. 2007).

The court may permit the respondents to present oral argument even though they had not answered the petition in the time previously set by the court and had thus waived their right to respond at oral argument without the court's permission. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 223 (Chk. S. Ct. App. 2007).

Costs for printing and copying the brief, appendix, and reply brief are expenses that traditionally have been included within costs that are awarded to prevailing parties. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text and the cover of the appellant's brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and that of any reply brief gray, and except by court permission, the parties' principal briefs must not exceed 50 pages, and the reply briefs not exceed 25 pages, when the appellant's briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant's brief before it submitted its own brief, the appellee's request to strike the appellant's brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The court will not look favorably upon anyone who attempts to manipulate type face in an effort to circumvent the intent of the Appellate Procedure Rules, which is to place a reasonable limitation on submissions to the court which, in turn, prevent the court from wasting time and resources. In such cases, the court may decide not to strike a brief when there is no evidence of any intentional disregard for the rules, and when the other party has not been prejudiced. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The amicus curiae's role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

A party whose position is being opposed by an amicus curiae brief may file a responsive brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae's motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

There are four factors to consider when the government files an untimely motion for enlargement of time to respond to appellant's brief in a criminal appeal: 1) the length of the delay in seeking an enlargement; 2) whether the appellant will be prejudiced; 3) whether the appellant objects to the motion; and 4) whether there is substantial public interest in allowing the government to submit its argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

When the FSM's request for an enlargement of time to file its response brief was over seven months late and the appellants opposed the enlargement; when allowing the FSM to file a brief would necessitate the postponement of the scheduled oral argument, severely prejudicing the appellants due to restrictions placed on their civil liberties as a result of the underlying convictions; when allowing the FSM to participate in oral argument (with or without filing a brief) would severely prejudice the appellants since it would deny them both adequate notice of the FSM's arguments and adequate time to prepare for responding to those arguments; when there is the public interest in allowing the government to participate in the appeal of a criminal matter and at least an equal public interest in requiring the government to diligently, competently and promptly prosecute its cases; when the FSM Department of Justice's unpersuasive excuses point to internal strife within their own ranks; when the public most certainly has an interest in holding the government to a standard that demands resolution of such strife and efficient administration of its duties, good cause does not exist to enlarge time for the FSM to file a brief and to be heard at oral argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

The court may grant co-appellants' motions to consider their two briefs as supplemental to each other. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

When an appellant has filed his brief properly he need not ask to incorporate his brief as his oral argument due to his absence from oral argument because all properly filed appellate briefs are considered regardless of participation in oral argument. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

Although it was stamped as "received" by the clerk, the court will deem filed a brief signed by unadmitted trial counselor and signed by an admitted supervising attorney since the brief was signed by an admitted attorney. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 n.1 (App. 2008).

Two appeals may both set for oral argument at the same time when the issues were identical, the facts were virtually identical, the trial court decisions appealed from were virtually identical, and the trial court transcript was completely identical since the trial court (and counsel) dealt with both cases simultaneously. For these same reasons, both appeals may be considered and addressed in one opinion. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

Under Appellate Rule 31(c) an appellee who fails to file a brief will not be heard at oral argument except by the court's permission. The court may permit an appellee to be heard when it cannot find any prejudice to the appellants and the appellee's participation at oral argument will be helpful. The appellee's participation may be restricted. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

The Complaint and Answer are pleadings that should normally be included in the appellant's appendix. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 n.6 (App. 2008).

An appellant's opening brief is due 40 days after the date of the appellate clerk's notice that the record is ready and Rule 26(c) does not enlarge the 40 days even if the notice is served by mail. But the date when an appellees' brief is due is calculated by "30 days after service" of the appellant's brief, and the time for an appellant to serve and file a reply brief is "14 days after service" of the appellee's brief. Under Rule 26(c) six extra days are added when the brief whose service triggers the time period running is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

An opening brief is deemed filed when mailed, not when received by the clerk. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106 n.3 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney's inability to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's failure to comply with such rules and orders. The attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Rule 34(a) exhibits a marked preference for oral argument on the merits, although the parties may waive oral argument unless the court directs otherwise, but Rule 2 provides a ready means for dispensing with oral argument, especially when argument would not be on the merits. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 & n.10 (App. 2008).

The FSM Supreme Court appellate division may, in the interest of expediting decisions or for other good cause shown, suspend the requirements or provisions of any of the appellate rules in a particular case on a party's application or on its own motion except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument, Rule 2 would permit the court to

dispense with oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules' timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's or the firm's failure to comply with such rules and orders. Thus, an attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

There is a marked preference for oral argument on an appeal's merits, although he parties may, of course, waive oral argument unless the court directs otherwise. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126-27 & n.11 (App. 2008).

Appellate Rule 2 provides a ready means for dispensing with oral argument, especially when the argument would not be on the merits. In the interest of expediting decisions, or for other good cause

shown, the rule allows the appellate division, on a party's application or on its own motion, to suspend any of the rules' requirements or provisions in a particular case except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument in all final dispositions, Rule 2 would permit dispensing with oral argument. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

The Constitution's due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules' timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

An appellee will not be allowed to participate in oral argument when it failed to file a brief. Kasmiro v.

FSM, 16 FSM R. 243, 244 (App. 2009).

Even if the appellate clerk omits the due dates for briefs in his notice that he has received the record, counsel should, because the record is certified by the trial division clerk before transmittal to the appellate clerk, consider that the record has been certified and that the time for briefs to be filed has started. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

When the parties receive the appellate clerk's notice that he has received the record, the parties have been notified that the record has been certified and that the appellant's brief is due 40 days hence and should conform their behavior accordingly. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

By rule, an appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready. The date of the clerk's notice that the record is ready triggers the running of the due date of an appellant's brief. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules' time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, oral argument is not set until after the necessary steps have been taken to allow for the preparation of brief, namely the certification and notice that the record is available, which notice provides the date from which the forty-day deadline for filing an opening brief is counted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When, on October 10, 2002, the appellants designated the entire trial court record and ordered a transcript of all trial court testimony for the appeal; when, almost five years later, on September 23, 2007, appellants' counsel filed a motion to certify the record although during the numerous proceedings during the almost five-year interim between the designation of the record and the motion to certify, counsel did not raise the issue of certification and availability of record, but instead requested continuances based on the existence of ongoing settlement negotiations and the need for additional time to prepare a brief; when, if counsel had, at any time after August 10, 2004, inquired with the clerk regarding the record he would have discovered that the record was certified and available; when the case was first called for oral argument on May 2, 2007, and the appellants then represented to the court that continuance was needed for reasons other than any delay in assembling and transmitting the record, the court is not inclined to consider the clerk's apparent oversight in promptly notifying the appellants that the record was available as a reason for the appellants' continuing failure to meet court deadlines for filing their brief. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

While it is the clerk's obligation to notify counsel when the record is ready, counsel also has an obligation to ensure that the record is assembled and transmitted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants' subsequent failure to file a brief without good cause against the clerk's apparent delay in notifying counsel of the record's certification and availability, and against the court's preference to hear an appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. App. 2009).

As required by Appellate Rule 28(a)(1), all appellate briefs are required to include certain helpful

features – a statement of issues, a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with page references. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 418 & n.2 (App. 2009).

The burden is on the appellant to apply, before his time allowance has run, for additional time to file a brief upon a showing of real need which will not unduly prejudice the appellee, and until such application for extended time to file a brief is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Lewis v. Rudolph, 16 FSM R. 499, 501 (Chk. S. Ct. App. 2009).

If an appellant fails to appear for oral argument, the court may hear argument on behalf of the appellee if his counsel is present, but an appellee that has not filed a brief will not be heard at oral argument. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

Although, ordinarily, the appellate court would consider the clerk's failure to provide a requested English-language transcript as good cause to grant an enlargement of time for an appellant to file its opening brief, when the appellant did not request the transcript until seventeen months after it filed its notice of appeal and when the appellant gives no explanation why its transcript request was made then although the rules require an appellant to make its transcript request within ten days after filing the notice of appeal, it is evidence of a lack of good faith because it is the appellant's burden to apply, before its time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee and, failing extraordinary circumstances, it constitutes neglect which will not be excused. If no extraordinary circumstances are present, the appellant's motion to enlarge time for it to file its opening brief will be denied. Kosrae v. Smith, 16 FSM R. 578, 579-80 (App. 2009).

Appellate Rule 10(b) is instructive in designating the specific portions of the trial transcript that comprise the record on appeal and it requires that, within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant request a transcript only of such parts of the proceedings not already on file as the appellant deems necessary. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 79 (App. 2010).

The record on appeal includes the transcript of proceedings designated and ordered by the parties, as specified in Appellate Rule 10(a), and the clerk must transmit the record when requested, but, when there is more than one set of appellants in a case, there may not be a single record on appeal. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

When each set of appellants' actions are separate, one set of appellants may not access the portions of the trial transcript created specifically for use in the separate appeal initiated by another appellant. Allowing one set of appellants to do so would permit them to make an end run around the transcript request and payment mechanism provided for in Appellate Rule 10(b), and would permit them to unfairly benefit from the proper transcript request and payment made by another appellant. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

If one set of appellants wants to access portions of the transcript they had not properly requested and paid for but which was ordered by a different appellant, they are free to either request portions of the trial transcript from the other appellant if they work out an equitable payment scheme with that appellant or they may submit a supplemental transcript order to obtain the requested portions of the transcript from the court reporter at the fee set by General Court Order No. 1991-3. Neither the Rules of Appellate Procedure nor the general principles of equity permit appellants to obtain from the Clerk's Office portions of the trial transcript they did not request in their original transcript order and for which they have not compensated the court reporter. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court's judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court's factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

"Service" is the key word in the Rule 26(c) provision that whenever a party is required or permitted to do an act within a prescribed period after service of a paper on that party and the paper is served by mail, six days is added to the prescribed period, but the prescribed period for filing the appellant's opening brief is not triggered by service. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 31(a)'s language is clear that an appellant must serve and file a brief within 40 days after the date of the Supreme Court appellate division clerk's notice that the record is ready. The appellate clerk must, on receipt of the "record ready certificate" from the clerk of the court appealed from, file it and must immediately give notice to all parties of the date on which it was filed and the date, 40 days after the appellate clerk's notice, when the appellant's brief will be due. Berman v. Pohnpei, 17 FSM R. 251, 253 & n.1 (App. 2010).

Rule 26(c) does not apply to an appellant's opening brief since the prescribed period for the brief's filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant's opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Among the documents which an appendix may include are any exhibits relied upon by either party, or at issue, in the appeal. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When an appellant argues that some of the trial court's legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot conclude that the deposition transcript is relevant. Thus, if the deposition transcript's assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and

have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Citations to specific documents from the record included in the appellants' appendix must cite to the specific page numbers in those documents. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 500 n.‡ (App. 2011).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

Since a trial court's findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court's findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 n.2 (App. 2011).

Documentary evidence that is offered and excluded should be listed as part of the certification of record and so should be a part of the record on appeal to the State Court, which would consider and decide, on a party's assignment of error, if it had been improperly excluded. If evidence that was offered and excluded is not listed in the certified Land Court records as an excluded exhibit, the evidence's proponent, and the State Court if it considers the evidence, ought to be able to point to where in the record it was offered. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 n.3 (App. 2011).

If an appellee has not actually received a copy of the appellant's opening brief, he may ask the appellate clerk to make a copy for him with the copying cost to be, after the appeal has been decided, taxed by the court on the non-prevailing party. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The cover of the appellant's brief should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief gray, and if separately bound, the appendix's cover should be white. These cover colors are for the judges' convenience, and, as should be apparent from the rule's text, the correct brief color is not mandatory but advisory. Since it is not mandatory, the clerks do not have the authority to refuse to file a timely brief otherwise in compliance with the rules but with a cover not the correct color. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

The court clerks certainly should bring any deficiencies to the brief filer's attention and seek compliance. If compliance is not obtained, the clerk should inform the presiding justice so that the justice can make an appropriate order. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Even when litigants have violated mandatory sections of Appellate Rule 32(a) governing the form of briefs, the remedy has not always been for the court (not the clerk) to refuse to file the brief. Courts will instead impose sanctions on counsel personally. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal

period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Costs incurred in the preparation and transmission of the record and the costs of the reporter's transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A brief was timely filed on November 12, 2013, when the appellate clerk's office was closed on the due date, Friday, November 8, 2013; when Monday, November 11, 2013, was a national holiday; and when November 12, 2013, was the next day that the clerk's office was open for business. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

It is not the court's responsibility to search the record for errors; the parties' briefs must clearly denote those portions of the record that support their arguments. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

It is incumbent on the appellants to ensure that any alleged "essential facts" are made part of the record for the appellate court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused. Pacific

Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice's power to dismiss an appeal upon stipulation of the parties or upon a party's failure to comply with the Rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Appellate Rule 30(b) encourages the parties to agree about the appendix's contents and that failing, an appellant is required, no later than ten days following issuance of the record ready notice from the clerk's office, to serve on the opposing party a designation of the portions of the record that the appellant intends to include within the appendix, along with a statement of issues to be presented for review. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 313 (App. 2016).

Appellate Rule 30(b)'s mandatory language contemplates that the appellants will serve its intended designation of the record and statement of issues on the appellee, giving the opposing party the opportunity to supplement that designation by imposing a duty on the appellants to include within the appendix the portions sought by appellee. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Appellate Rule 28(e) requires the parties, in their briefs, to cite to the record as included in the appendix or the record as a whole. Equally important as the provision of an appendix to both the appellate panel and appellee's counsel, is the proper referencing to the record in appellant's brief. Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for error. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Since the appellants have neglected to comply with Rule 30(b) when they did not contact the appellee to solicit its input about the appendix's contents and when there were other deficiencies in the appendix's composition, the appellants will be entitled to cure those procedural defects, as their noncompliance did not rise to the level of willful conduct and remedying the cited deficiencies within a finite period of time will not unduly prejudice the appellee. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314-15 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants' appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants' "amended" brief. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Notwithstanding that the court for good cause shown may upon motion enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time, the court does not condone what it may perceive as a practitioner causing undue delay in fling a brief. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel's inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

Upon the appellee's motion, certain documents in the appellants' appendix were stricken when a

search did not reveal those documents in the certified record. Sam v. FSM Dev. Bank, 20 FSM R. 409, 414-15 (App. 2016).

Appellate Rule 30(a) requires an appellant to file with the appellant's brief, an appendix that must contain the relevant and essential portions of the record, including those parts to which the parties wish to direct the particular attention of the court, and a document that should be included is any portion, relied upon by counsel, of the transcript of the proceeding in the court appealed from, unless it was reproduced in a transcript filed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for errors. It is not the court's responsibility to cobble those relevant sections of the transcript which constitute the gravamen of the appellants' claim. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Under Appellate Rule 10(b)(3), when an appellant neglects to communicate with the opposing party about which portions of the record it intends to request, the appellee is deprived of an opportunity to designate additional parts, if not the entire transcript. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 650 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants' motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk's notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal's dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant's failure to file on time; and the extent of appellant's efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to such finding or conclusion because it is not the appellate court's responsibility to search the record for errors. The parties' briefs must clearly denote those portions of the record that support their arguments. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

– Decisions Reviewable

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal'Mad, 1 FSM R. 196, 198 (App. 1982).

The court will not issue a writ of certiorari to review the trial court's suppression of defendant's confession in a case in which no assignments of error are furnished to the court, although such decision effectively terminates the case because the government cannot continue its prosecution without the confession, and although no appeal is available to the government. In re Edward, 3 FSM R. 285, 286-87 (App. 1987).

A petition for certiorari will not be granted unless it delineates the act or acts alleged to be in error with sufficient particularity to demonstrate material, harmful error. In re Edward, 3 FSM R. 285, 288 (App. 1987).

There are no FSM statutory or constitutional provisions that expand or establish the grounds for a writ of certiorari beyond its customary scope. In re Edward, 3 FSM R. 285, 289 (App. 1987).

Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. In re Main, 4 FSM R. 255, 257 (App. 1990).

Where it is unclear as to what rights a state trial court found the appellants had and the FSM court is unequipped to define those rights, and when the FSM appellate panel remains unsatisfied that the due process issue was raised below, although not determinative these are additional factors militating against FSM Supreme Court, appellate division review of a state trial court decision. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 325 (App. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 324 (App. 1992).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

An appeals court has no jurisdiction over a motion for an injunction filed after final dismissal of the appeal case. Damarlane v. Pohnpei Transp. Auth. (II), 6 FSM R. 167, 168 (App. 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).

When no motion for relief from judgment was filed in the trial court and the appellant appealed from an order in aid of judgment, the appellate court cannot address the validity of the underlying judgment as the issue was never properly raised before the trial court. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419-20 (App. 1996).

On appeal, a party will be limited ordinarily, to the specific objections to evidence made at trial and the appellate court will consider only such grounds of objection as are specified. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A party cannot raise an issue upon appeal that he did not raise at the trial level, simply because the result of not raising the issue dissatisfies him. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A broadly stated affirmative defense not argued at trial and on which no evidence has been submitted and which was therefore summarily rejected by the trial court has not been preserved for appeal. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 618 (App. 1996).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under her own name and as the real party in interest. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

An objection to the amount of a monetary sanction cannot be raised for the first time on appeal. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

A tentative agreement to a stipulated order cannot preclude a party from appealing the order actually entered by the trial court when it differs from the stipulation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

The FSM Supreme Court's jurisdiction is derived from the FSM Constitution which grants the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM R. 460, 461 (Chk. 1998).

There is no persuasive authority that should a garnishee pay a judgment pursuant to a garnishment order, that the garnishee would waive its rights to appeal. Louis v. Kutta, 8 FSM R. 460, 462 (Chk. 1998).

The FSM Supreme Court appellate division has jurisdiction over appeals from final decisions of the Chuuk State Supreme Court appellate division because the state constitution so permits. Chuuk v. Ham, 8 FSM R. 467, 468 (App. 1998).

Appeals may be taken to the appellate division of the FSM Supreme Court from all final decisions of the trial division of the Kosrae State Court and from any other civil case if permitted as a matter of state law. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

With some exceptions, the FSM Supreme Court does not exercise jurisdiction over appeals that are not from final decisions. Damarlane v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

The FSM Supreme Court can hear appeals from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national Constitution, national law, or a treaty. Damarlane

v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

A motion to reconsider dismissal of an appeal by the Pohnpei Supreme Court appellate division is relief under comparable rules of any state court from which an appeal may lie equivalent to motions under the rules specifically cited in FSM Appellate Rule 4(a)(4) because the motion seeks reversal or modification of an earlier dispositive order. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A party to an appeal in which the Chuuk State Supreme Court appellate division has rendered an appellate decision may appeal such decision to the FSM Supreme Court appellate division by certiorari, except in a criminal case in which the defendant may appeal as of right. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

A petition for writ of certiorari that seeks to appeal an order by a single Chuuk State Supreme Court appellate justice is not an appellate decision. The FSM Supreme Court therefore lacks jurisdiction to consider it. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel's dispositive "decision." Wainit v. Weno, 9 FSM R. 160, 162-63 (App. 1999).

Once an appellant has sought and obtained review of a single justice's order by the appellate panel of the Chuuk State Supreme Court appellate division, the FSM Supreme Court appellate division may then review that decision. At that point the FSM Supreme Court has jurisdiction to hear the appeal, but not before. Wainit v. Weno, 9 FSM R. 160, 163 (App. 1999).

The FSM Supreme Court's appellate jurisdiction over matters decided by the Chuuk State Supreme Court originates in article XI, section 7 of the FSM Constitution. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

In the Chuuk State Supreme Court appellate division the action of a single justice may be reviewed by the court. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

Decisions of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

An appeal dismissed because it is not from a final order is dismissed without prejudice to any future appeal made from the order once it has become final. Santos v. Bank of Hawaii, 9 FSM R. 285, 288 (App. 1999).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds

that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on appeal are moot. FSM v. Louis, 9 FSM R. 474, 482-83 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

When it appears that a case comes before the FSM Supreme Court appellate division as a final decision entered by the Chuuk State Supreme Court appellate division, the review of such a decision may be had before the FSM Supreme Court appellate division. Bualuay v. Rano, 9 FSM R. 548, 549 (App. 2000).

The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error, or error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A discovery order is not appealable. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

A single justice's decisions are reviewable by the court and may be so reviewed when a full appellate panel of judges has been assembled. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

An appellate court has jurisdiction over an appeal only if it is timely filed. The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until

final judgment has been rendered by the trial court. Hence the party petitioning for a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

In an appeal from an administrative agency to the FSM Supreme Court appellate division, Appellate Rule 26(b) would control. That rule precludes the appellate division from enlarging the time for filing a notice of appeal from an administrative agency. Because this provision limits the appellate division's power to enlarge time, it is jurisdictional. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

The appealability of the denial of dismissal of a criminal case is an issue for the appellate division since it goes to their jurisdiction. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

When the court is of the opinion that its order involves a controlling question of law, and that an immediate appeal from its order will materially advance the ultimate termination of the litigation, as well as other cases, the court may permit a party to seek permission to appeal pursuant to Chuuk Appellate Rule 5(a). Kupenes v. Ungeni, 12 FSM R. 252, 257 (Chk. S. Ct. Tr. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM R. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM R. 354, 356-57 (Chk. S. Ct. Tr. 2004).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R.

365, 372 (App. 2004).

The Kosrae State Court has jurisdiction to review all decisions of inferior courts. Neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

A Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final judgment and in which they will merge. The purpose of an appeal of a final judgment is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This procedure advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The FSM Supreme Court has exclusive jurisdiction when all parties are agents of the national government and no issue involving land is presented. When the court of first instance is the appellate division, and not the trial division, the appellate division's jurisdiction is necessarily derivative of the trial division's since the Supreme Court appellate division may review cases heard in the national courts. Whether the case is in a proper procedural posture is different from the question of the appellate division's subject matter jurisdiction, so the threshold question is whether the appellate division may exercise that jurisdiction as the court of first instance. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

Since the Kosrae statute requires that within 90 (ninety) days of receipt of the certified copy of the notice of appeal, the Land Court must provide to the Kosrae State Court a complete written copy of the transcript of proceedings, when the transcript that is part of the record is only a summary of the Land Court hearing and not a verbatim transcript and when the tape of the hearing has either been erased or is inaudible and it is thus not possible to produce a complete transcription of the hearing now, the court, in light of the statute's requirement, can see no alternative but to remand the matter to the Land Court for rehearing. The sole purpose of this rehearing is to insure that a complete record of the hearing is made and preserved so that a verbatim transcript may be prepared. Heirs of Mackwelung v. Heirs of Mongkeya, 13 FSM R. 20, 21 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government's removal of that case to the FSM Supreme Court does not affect the court's jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since the

issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O'Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

An appeal from an adjudicated matter in the Kosrae Land Court may be made within sixty days of service of the Land Court Justice's written decision upon the party appealing the decision. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting the appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

When an individual, who was not a party to the Land Court proceedings, likely does not have standing to appeal the Land Court decision, and when the Heirs of Joseph Nelson, as the claimant and party who claimed ownership of the subject parcels at the Land Court proceedings, may be indispensable parties to this litigation and should have appeared as appellants but did not, the court may be without jurisdiction to consider the appeal filed by the individual in his individual capacity. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An appeal from an administrative agency must be started within the established statutory time period. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director's certification of the election

results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate's appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director's decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

When the appellant introduced no evidence of customary law at anytime before the appeal, it is deemed to have waived the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When the issue of custom was not raised before the trial court, it can be disregarded on appeal on that ground alone. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 n.6 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

When the appellants appeal from a decision fully in their favor; when the appellants challenge the ownership of a portion of Parcel 069M05, which shares a boundary with Parcel 069M03 but their appeal is from a Land Court determination of the ownership for Parcel 069M03 in their favor; when all parties agree the appellants own Parcel 069M03; when the appellants admit that they are disputing the ownership of a portion of Parcel 069M05, which is not part of the Land Court determination in the matter below; and when the appellants previously appealed the determination about that parcel and the court's order in that previous case is final, there is no justiciable dispute being presented to the court in the appeal. Heirs of Tulenkun v. George, 14 FSM R. 560, 561-62 (Kos. S. Ct. Tr. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court is limited to the trial court's final orders and judgments. Final orders and judgments are final decisions. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court case is limited to the trial court's final orders and judgments. Final orders and judgments are final decisions. Bossy v. Wainit, 15 FSM R. 30, 32-33 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant's claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive's ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

When an appellant asks to be advised on whether, if he goes to trial, and if he is convicted on more than one count, and then if he is sentenced on more than one count, would his sentence then violate his right not to be subjected to double jeopardy, any ruling the appellate court could make would be in the nature of an advisory opinion and the court does not have the jurisdiction to issue advisory opinions. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167-68 (App. 2007).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot, and if the appeal has become moot, the court no longer has jurisdiction to hear and decide it. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

The Kosrae State Court normally reviews a Land Court order or decision in an appeal. But when the

court is reviewing the Land Court's issuance of title where there was no hearing and appeal and no statutory procedure is set for this type of review and when the Kosrae Constitution provides that the State Court has jurisdiction to review all inferior court decisions and when the State Court has the power to make rules and orders, and do all acts, not inconsistent with law or rule, required for the due administration of justice, based on the constitutional grant of jurisdiction and on the power to administer justice, the Kosrae State Court will review the issuance of certificate of title. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the case clearly raises issues concerning the FSM Constitution since the appellant claimed a violation of the FSM Constitution, which he not only asserted early on in the case, but which the Pohnpei Supreme Court appellate division also considered in rendering its opinion, the FSM Supreme Court thus not only has jurisdiction over the case, but its consideration of the state court's determination that the appellant's letter is not protected speech under the FSM Constitution is also ripe for review since FSM Constitution Article XI, Section 7 provides that the FSM Supreme Court appellate division has jurisdiction to hear appeals from cases heard in state and local courts if they require interpretation of the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

The FSM appellate rules, and the cases interpreting them, clearly enunciate that untimely filing of a notice of appeal deprives the appellate division of jurisdiction. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When the appellant's error was not one of timeliness but rather one of not filing in all the appropriate courts because the appellant timely filed her notice of appeal in the Kosrae State Court, and later did perfect her appeal within the extended 72-day period by properly filing her notice of appeal with the FSM Supreme Court appellate division 57 days after the Kosrae State Court's entry of judgment, the appeal is permissible, despite being directed to the wrong court, since the appeal: 1) was otherwise valid and timely; 2) steps were taken to correct the error; 3) the steps to correct the error were undertaken within the period of extension allowed by our rules; and 4) there was no prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant's brief until he was fully licensed to appear

before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)'s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant's flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Even when neither party has raised the issue, an appellate court, as a court of limited jurisdiction, is obligated to examine the basis for its jurisdiction. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely notice of appeal from a final decision is a prerequisite to an appellate court's jurisdiction over an appeal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys' fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When, while the judgment was on appeal, the appellant's recusal motion was filed at the same time as her Rule 60(b) motion for relief from judgment and the recusal motion had to be decided before any action could be taken on the Rule 60(b) motion, and when the appellant did not file a separate notice of appeal from the post-judgment order denying recusal, the appellate court accordingly lacks jurisdiction to review the recusal issue. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

An appellate court is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Alanso v. Pridgen, 15 FSM R. 597, 598 n.1 (App. 2008).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM

Supreme Court appellate division never acquired jurisdiction over the case. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

Appeals may be taken from all final decisions of the Kosrae State Court within forty-two (42) days after the date of the entry of the judgment or order appealed from. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An order from the Kosrae State Court may be a final decision for the purposes of appeal. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court's findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Where the Kosrae Code provides that government appeals in a criminal proceeding are limited to when the Kosrae State Court has held a law or regulation invalid, and further provides that on a government appeal from a criminal proceeding the appellate court may not reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation; and where the prosecution's basic claim on appeal is that the trial court ought to have found that the defendant had the requisite intent required for the charge of aggravated assault, and that the trial court's interpretation that the evidence was insufficient to prove the required intent was wrong, it is not the type of prosecution appeal authorized by the Kosrae statute, and the FSM Supreme Court therefore lacks jurisdiction over it. The motion to dismiss will be granted on this ground. Kosrae v. Langu, 16 FSM R. 83, 87-88 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

Although appellants could have addressed the issue of deficient notice of trial with an appropriate filing in the trial court, they were not required to before filing an appeal since a trial court may not shirk its responsibility to provide notice in compliance with due process merely because a party has a measure of recourse when notice is deficient. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Where a plain error is involved that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings, a party will not be deemed to have waived the right to challenge the issue on appeal. In such cases, where the court's integrity is brought into question because the court did not follow its own procedures for providing notice of trial, the only remedy is to permit a new trial where adequate notice is given. Farek v. Ruben, 16 FSM R. 154, 157-58 (Chk. S. Ct. App. 2008).

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).

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).

Under Chuuk election law, an appeal may be taken to the FSM Supreme Court appellate division from a Chuuk State Supreme Court appellate division decision in an election contest. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

A court's subject-matter jurisdiction may be raised at any time by a party or by the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

An appellate court is obligated to examine the basis of its jurisdiction. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Even if the prosecution succeeded in convincing an appellate court that a trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

In a prosecution appeal from an acquittal in a Kosrae State Court criminal case, the appellate court has no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered or to order a new trial and it has no jurisdiction to render an advisory opinion on statutory construction or to decide a moot appeal. It will accordingly dismiss the appeal. Kosrae v. Jim, 17 FSM R. 97, 99 (App. 2010).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When an intervener did not appeal the trial court decision, the appellate court need not address his trial court claim. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. 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).

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).

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).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

The Kosrae state constitution permits the FSM Supreme Court appellate division to review cases on appeal from the highest Kosrae state court in which a decision may be had, which, since no Kosrae State Court appellate division has yet been prescribed by law, is the Kosrae State Court trial division. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

A Kosrae small claims judgment does not qualify as a decision of "the highest state court in which a decision may be had" since there are further State Court proceedings available in which a decision may be had. A decision after a trial de novo on the State Court's regular civil docket, instead of on its small claims docket, would be a judgment from the "highest" state court in which a decision could be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649 (App. 2011).

When a party's sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court's only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

When no party has paid any of the judgment, an appellate court cannot rule on whether parties would be liable for contribution to a co-defendant since there can be no actual case or dispute until the co-defendant has paid more than its pro rata share because anything the appellate court says now would be an advisory opinion and it does not have any jurisdiction to give advisory opinions. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

Since a prerequisite to an equitable indemnity claim is that the party seeking it (indemnitee) have discharged the liability for the party against whom it is sought (indemnitor), when neither party seeking indemnity has discharged any of their liability to the judgment-creditor, no equitable indemnity claim has yet accrued even if the cause of action were recognized. Since it has not, any appellate opinion about whether equitable indemnity ought to be recognized would only be an advisory opinion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

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. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court's dismissal of the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Since the issue of a court's subject-matter jurisdiction can be raised at any time, no cross-appeal is needed for the appellee to raise it, and since the appellate court has an obligation to examine the basis of its jurisdiction even if it must do so sua sponte, the appellate court must promptly address any claim that it lacks jurisdiction and examine the basis for its jurisdiction before it considers the appeal's merits. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited procedure pertinent to that form of relief. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Generally, only final orders of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division, but the FSM Supreme Court may also hear appeals from the Kosrae State Court in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

An appellate court may receive proof or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013).

A court is precluded from making pronouncements on the basis of a hypothetical, abstract, or academic issue or when the matter is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When an appellant asserts that the six-year statute of limitations means he is not legally liable for any payments that were due over six years before the lawsuit was filed and all the extra interest that accrued because those payments were missed and the appellee has conceded that the judgment against the appellant should be reduced by those amounts, the parties no longer have a legally cognizable dispute about this issue's outcome and the issue is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants' cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants' attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts and neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to a State Court appellate division. There is thus no requirement that an appeal from Land Court be heard by a three-judge panel in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

The FSM Supreme Court appellate division has the power of appellate review of cases on appeal from the highest state court in which a decision may be had. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

The general rule is that appellate review of a trial court is limited to final orders and judgments. The exceptions to this rule include: review of injunctions, appointment of receivers, admiralty decisions, or other statutory rights. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal sanction was issued, when no fines were assigned, when no disciplinary action was ordered, when there was not an explicit finding of wrongdoing by the court, when there is only a footnote instructing the opposing party they have the right to investigate the matter and file a request for disciplinary action if they find reason, this is a non-decision, and as such, it is not appealable. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An FSM judge is required to memorialize proceedings, and in many cases, the appropriate action is an instructional footnote, rather than calling for full disciplinary hearing. Mori v. Hasiguchi, 19 FSM R. 414, 417 n.1 (App. 2014).

An appellant may not complain of an error in his favor in the rendition of a judgment. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The most distinctive feature of the doctrine of appellate standing to emerge from the adverse impact requirement is that a prevailing party cannot appeal from a favorable judgment to secure a review of unfavorable findings. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

Under the doctrine of appellate standing, an attorney cannot raise an appeal to revise the reasoning, or verbiage, of a decision if that decision is favorable to his client. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if

necessary. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

When, in order for the FSM Supreme Court appellate division to have jurisdiction over the second Nett District Court appellate division's decision about whether the Nett Chief Justice should have heard the trial division case, the appellant would have had to have filed a notice of appeal from that decision. Since he did not, the FSM Supreme Court does not have jurisdiction to review the part of the second decision which the court would have had jurisdiction to review if there had been a timely notice of appeal, and since there was no timely notice of appeal from the decision that would require interpretation of the FSM Constitution's due process clause, the appeal must be dismissed. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607-08 (App. 2014).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney's own name and as a real party in interest. When the attorney was named in the notice of appeal's caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

The well-established general rule is that only final judgment decisions may be appealed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Generally, an appeal from a trial judge's ruling is to be taken only after completion of all trial proceedings. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The appeal of a trial court order partially dismissing claims was brought prematurely and was not ripe for review and also is not reviewable under the collateral order doctrine when it did not conclusively determine the rights and liabilities in the underlying multi-claim action, involving multiple parties; when the relevant order speaks directly to the action's merits and found the dismissed claims to be unsupported by the facts pled in the complaint; and when a dismissal at this juncture would not preclude appellants from lodging an appeal once a final decision is entered. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appellate court will first consider an assignment of error that is a potentially dispositive threshold issue going to the court's subject-matter jurisdiction because if the appellants prevail on the issue any opinion given on other issues would merely be advisory and the court does not sit to render advisory opinions since it lacks the authority to do so. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

An appellate court may receive proof of or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Esau v. Penrose, 21 FSM R. 75, 78 (App. 2016).

The Kosrae State Court has the authority to hear appeals from Land Court, but it cannot act until the Land Court has adjudicated the matter and an appeal has been filed. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions by the Kosrae Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court's decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

The statutory sixty-day period to appeal a Kosrae Land Court decision is tolled until proper service is made. Serving notice of a Land Court adjudication or decision, is required in order to give the party a chance to appeal, and if a party is not properly served the Land Court's written determination of ownership, the statutory sixty-day appeals period does not run against that party. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

When a Kosrae Land Court decision was never properly served on the appellant, the Land Court will be instructed to properly serve its decision on the appellant, and the Kosrae State Court will then allow the appellant sixty days to file an appeal after the Land Court's decision has been properly served. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

The FSM Supreme Court appellate division has jurisdiction to hear appeals from all final decisions of the Kosrae State Court trial division, if a notice of appeal is filed as provided in FSM Appellate Rule 3 within 42 days after the entry of the judgment or order appealed from. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

If the Kosrae State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court, with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate, but if the State Court affirms the Land Court decision, no further appeals to the State Court will be allowed. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 99 (App. 2016).

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the proper forum for the claim would have been a timely appeal from the Land Court, not a complaint filed outside the applicable time to appeal, the Kosrae State Court's dismissal of the action will be affirmed. Lonno v. Heirs of Palik, 21 FSM R. 103, 109 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

An appellate court lacks jurisdiction over a matter that was not timely appealed because a October 22, 2015 notice of appeal is untimely for an appeal from a September 4, 2015 decision. Edwin v. Kohler, 21 FSM R. 133, 135 & n.1 (App. 2017).

When the appellant did not allege any facts, law, or error by the Pohnpei Supreme Court appellate division that implicate either interpretation of the FSM Constitution, national law, or treaty or a violation thereof, the appeal would not be properly before the FSM Supreme Court appellate division for review, even if the appellant were permitted to brief the matter and an FSM constitutional issue was raised for the first time. Edwin v. Kohler, 21 FSM R. 133, 136-37 (App. 2017).

An appellant offers the FSM Supreme Court appellate division no basis on which it could properly exercise jurisdiction, when he is content to recite the same self-serving statement that his due process rights were violated by the orders of the Pohnpei Supreme Court trial and appellate divisions without further explaining how or why those orders violated due process under the FSM Constitution. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

The FSM Supreme Court is not in a position to review Pohnpei Supreme Court appellate division decisions that do not involve interpretation of the FSM Constitution, national law or treaty, or that do not involve some other violation of the FSM Constitution, even when a litigant contends that court's decision might have been wrongly decided. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

– Decisions Reviewable – Collateral Orders

Immediate appeals from collateral orders will sometimes be necessary when they have a final and

irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A Rule 11 sanction establishing a party's liability to the plaintiffs based on a third-party beneficiary claim and an agreement would be reviewable in an appeal from a final judgment setting forth, among other things, the amount of damages. The same can be said of the sanction awards of attorney fees and costs. When the sanctions all run to a party and can be reviewed on appeal after a final judgment is rendered, an adjudication on liability without determining damages (the amount of that liability) is not a final judgment, and is thus not appealable. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

A Civil Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Immediate appeals from orders that are not final judgments will sometimes be necessary when they have a final and irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, from that small class of orders that finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166-67 (App. 2007).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

Because reversal on appeal from a conviction following a second trial comes too late to afford an accused protection against being twice put to *trial* for the same offense, an order denying a motion to dismiss on the ground that the accused had previously been tried for that offense is a final decision and thus appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

When the double jeopardy claim involves protection against multiple punishment, not the protection against being put on trial a second time, the rationale for granting pretrial appeals does not apply. There is no right to an immediate appeal from a double jeopardy claim of multiple punishments because that right can be fully vindicated on an appeal following a final judgment and therefore is not an immediately appealable final decision. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate

court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. If an order meets all three of these requirements, it is a final decision and is immediately appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The collateral order doctrine permits appeals before a final decision. The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

The collateral order doctrine does not apply to an interlocutory appeal that involves an issue which would be reviewable on appeal from a final decision and which is not completely separate from the merits of the action but is at the heart of the action's merits. The appeal will therefore be dismissed since it is not from a final decision and thus not ripe for review. The dismissal will be without prejudice to any future appeal from a final decision. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562-63 (App. 2008).

If a person's contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

– Decisions Reviewable – Direct Appeals

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the national interest. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

When an appeal from an administrative agency decision involves an issue of extreme time sensitivity and of national importance that ultimately would have to be decided by the appellate division the court may allow a direct appeal to the appellate division. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

"Direct" appeals to the appellate division have been limited to entire cases appealed from administrative agencies decisions. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The FSM Supreme Court has in the past permitted direct appeals from administrative decisions to the FSM Supreme Court appellate division. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

When no development of a trial record is required since there is no factual dispute and the issue for determination is one of law, when the case is time sensitive because of the effect on pending cases, and when the issue is one of significant national importance since it bears on the fundamental relationship between all three branches of government, the appellate division has subject matter jurisdiction over the matter and may hear the case. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

The appellate division may consider "direct appeals" in cases of national importance and extreme time sensitivity involving the national government. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

When a party's sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court's only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

– Decisions Reviewable – Final Decision Defined

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. In re Extradition of Jano, 6 FSM R. 23, 24 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

In civil cases appeals may be taken from all final decisions of the Kosrae State Court. Finality should be given practical rather than technical construction, however, a summary judgment on the issue of liability, is not final or appealable until after the damage issue is resolved. Giving the word "final" its ordinary meaning, a decision that does not entirely dispose of one claim of a complaint containing four cannot be said to be final. Kosrae v. Melander, 6 FSM R. 257, 259 (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).

Where summary judgment has been granted on the issue of liability, but the issue of damages is still pending, the right to appeal has not been lost even though 10 months have elapsed because no final judgment has been entered and the deadline for filing an appeal does not begin to run until a final judgment has been entered. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 356 (Pon. 1994).

Civil case appeals to the FSM Supreme Court may be taken from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national constitution, national law, or a treaty; and in other cases where appeals from final decisions of the highest state courts are permitted under the Constitution of that state. A final decision is one which leaves nothing open to further dispute and which ends the litigation on the merits leaving the trial court with no alternative but to execute judgment. Damarlane v. United States, 7 FSM R. 202, 203-04 (App. 1995).

A state appellate court opinion in response to questions of state law certified to it by the FSM Supreme Court trial division is not a final decision and therefore not reviewable by the FSM Supreme Court appellate division. Damarlane v. United States, 7 FSM R. 202, 204 (App. 1995).

When a judgment has been entered, executed, and paid into court, the order disbursing the executed funds is a final decision and appealable. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

An order by a single justice of the Chuuk State Supreme Court dismissing an appeal is a final order that may be appealed to the FSM Supreme Court appellate division. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

If, on remand from an appeal to the trial court, all that is left for the administrative agency to do is ministerial, the order of remand is final. If the agency has the power and duty to exercise residual discretion, to take proof, or to make an independent record, its function remains quasi-judicial, and the remand order is not final. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

Ordinarily a judgment of reversal rendered by an intermediate appellate court which remands the cause for further proceeding in conformity with the opinions of the appellate court is not final and therefore, not appealable to the higher appellate court, so long as judicial action in the lower court is required. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

The general rule is that only final judgments can be appealed. There is no appealable final judgment when only liability and not damages decided. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A single appellate justice might not be considered the highest state court when his orders are subject to review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 n.3 (App. 1999).

The FSM Supreme Court does not have jurisdiction to consider an appeal from an order by a Chuuk State Supreme Court single justice denying a motion for a stay or injunction pending appeal because it is not from a final decision. Chipen v. Election Comm'r of Losap, 9 FSM R. 163, 164 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. 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 judgment. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

When a trial court has determined a party's liability for an attorney's fees sanction but has not determined the amount of that liability, it is not a final order because the trial court could not execute on the order when the amount of attorney fees had not been fixed. Only once the fees have been fixed will the order become final and appealable. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. Final orders and judgments are final decisions. Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

When an appeal is from a trial court post-judgment order that does not make any specific order concerning how the judgment is to be satisfied, or what specific funds are to be used to satisfy the judgment, or specify the method that should be used to provide payment to the plaintiff, and that does not make a specific finding about the fastest way for the judgment to be paid, and which, by its terms, extends only for two months when the trial court would then take further action, if necessary, it is not appeal from a

final decision and will be dismissed. Chuuk v. Davis, 9 FSM R. 471, 473-74 (App. 2000).

When, on August 12, 1998, the trial court entered a judgment on four claims pursuant to FSM Civil Rule 54(b) that stated that "there is no just reason for delay," and expressly directed entry of judgment as to the four claims, then that judgment is final and appealable, and the time to appeal began to run as of the date of the entry of the judgment, August 12, 1998. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

An order granting or refusing a transfer of venue is not a final judgment and is not appealable. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

Because of the automatic ten-day stay on the issuance of a writ of execution, a money judgment, upon entry of judgment, is final for the purposes of appeal, even though it is not yet final for the purposes of execution. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

When a municipality's complaint alleged that the defendants damaged its reef, submerged lands, and resources but the trial court concluded that since the state owned the submerged lands and resources, the municipality was precluded from recovering damages for injury to the submerged lands and living marine resources, but if it was able to prove damage to other municipal resources, it would be provided that opportunity at trial; when no other claimed municipal resources were identified by either the court or a party, before or after that decision; and when the municipality stipulated to a final judgment being entered against it, it abandoned any claim that it might have had for damage to resources other than living marine resources; nothing remained for the trial court to adjudicate and the judgment was final and appealable. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

Denial of a defense motion to dismiss ordinarily is not final. Thus, appeals from a denial of a defense motion to dismiss based on challenges to the charging document's sufficiency or failure to charge an offense or and many other grounds will be dismissed. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Heirs of George v. Heirs of Tosie, 15 FSM R.

560, 562 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys' fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the July 25, 2007 State Court order denying the appellants' motion for reconsideration ended all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

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).

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).

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).

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).

Generally, the appellate division may review only final decisions. 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, and 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. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

Dicta is not a final decision that may be subject to appellate review since dicta cannot be used as a basis to require or compel any later action. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division may, in civil actions, hear appeals from the trial division only from final decisions, interlocutory orders disposing of injunctions, interlocutory orders with respect to receivers, interlocutory decrees determining rights and liabilities of parties in admiralty cases. 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 cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the appealed order did not affect the substantial rights of the parties, and the cause was retained for further action, as evidenced by the subsequent orders, the appealed order was not final as to the issue it resolved, and the appellate court has no jurisdiction to hear the appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the Kosrae State Court's April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court's July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. 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. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 19 FSM R. 416, 418-19 (App. 2014).

In civil actions, the appellate division may take appeals from the trial division only from final decisions, but an order is not final when 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 cannot ordinarily be final for the purposes of the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 343-44 (App. 2016).

When there was further trial court activity involving a determination of the specifics of the relevant sanctions requiring further analysis by the lower court, the order appealed from was not a "final decision" and consequently, the appellate court is without jurisdiction to consider the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

An adjudication on liability, without determining damages (the amount of that liability) is not a final judgment and thus not appealable. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When the trial court issued an order awarding attorney's fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review,

because the order appealed from established only the pecuniary responsibility for opposing counsel's reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court's order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney's fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Esau v. Penrose, 21 FSM R. 75, 78 (App. 2016).

Dismissal of an action for lack of subject-matter jurisdiction is a final judgment for purposes of appeal. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of the appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

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 cannot ordinarily be final for the purposes of appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

The appellate court lacks jurisdiction to review an appeal from a trial court order that was not even a final decision on whether the trial court would accept the plaintiffs' opposition to the defendants' pending dismissal motion because that order was not a final decision on anything since it left for the trial court's future decision not only whether it would accept a future opposition to the pending motion but also whether the pending motion would be granted or denied. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

– Decisions Reviewable – Interlocutory

For an interlocutory appeal, FSM Appellate Rule 5 must be read as requiring a prescribed statement from the trial court. Lonno v. Trust Territory (II), 1 FSM R. 75, 77 (Kos. 1982).

The trial court will not issue a Rule 5(a) prescribed statement for an interlocutory appeal when there is no substantial ground for difference of opinion and that an immediate appeal from the order would retard, rather than materially advance, the ultimate determination of the litigation. Lonno v. Trust Territory (II), 1 FSM R. 75, 78 (Kos. 1982).

Generally only final judgments or orders can be appealed, but the appellate division may, at its discretion, permit an appeal of an interlocutory order. The court, in exercising its discretion should weigh the advantages and disadvantages of an immediate appeal and consider the appellant's likelihood of success before granting permission. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Where a court order takes no action concerning an existing injunction and states that it may modify the injunction depending on the happening of certain events, that order does not come within the provision of the rule allowing interlocutory appeals of orders granting, continuing, modifying, or dissolving, or refusing to dissolve or modify an injunction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The general rule is that appellate review of a trial court is limited to final orders and judgments. However, certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division. In exceptional cases, the extraordinary writs of mandamus or of prohibition may be issued to correct a trial court's decisions before final judgment. Appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The appellate division does not have the power to enlarge time to petition for permission for an interlocutory appeal, but the trial division may re-enter its order with a prescribed statement thereby causing a new ten-day period to run because a trial court retains jurisdiction over its interlocutory orders and may reconsider any such order until a final judgment is entered. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

Pursuant to FSM Appellate Rule 4(a)(1)(B) the FSM Supreme Court appellate division has jurisdiction to hear an appeal from an interlocutory order granting a permanent injunction. Stinnett v. Weno, 8 FSM R. 142, 145 n.2 (Chk. 1997).

In order for the appellate division to hear an appeal in the absence of a final judgment there must be some other source of jurisdiction, such as FSM Appellate Rule 4(a)(1)(B) which allows appeals from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

As a general rule in an interlocutory appeal of an injunction an appellate court concerns itself only with the order from which the appeal is taken, and reviews other issues only if they are inextricably bound up with the injunction. Thus an appellate court has jurisdiction to review a summary judgment on the merits when the appellants are subject to a permanent injunction which is inextricably bound up with the underlying summary judgment. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

When no final judgment or decree has been entered an appeal may be taken from the Kosrae State Court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions; or, in a civil proceeding, when a justice has certified that an order not otherwise appealable involves a controlling question of law concerning which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance completion of the action. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

The FSM Supreme Court appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases, and any other civil case in which an appeal is permitted as a matter of law. Permission may also be sought for an interlocutory appeal pursuant to Appellate Rule 5(a). Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, and although interlocutory appeals may be made by permission in civil cases, such appeals do not stay trial division proceedings. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

When there are no monetary Rule 11 sanctions against party's counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

Generally, the only interlocutory appeals allowed are those for which permission has been sought and granted, or those from certain orders concerning injunctions, or concerning receivers or receiverships, or from decrees determining parties' rights and liabilities in admiralty cases. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Irrespective of any stipulation of the parties, the court must still determine whether the orders in question are suitable for certification for appeal pursuant to Appellate Rule 5(a). The court may not certify orders by virtue of the fact that the parties have stipulated to a stay. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

When an FSM Supreme Court justice in the trial division, in making in a civil action an order not otherwise appealable under Appellate Rule 4(a), is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the justice shall so state in writing in such order. The remaining article IX, section 3 FSM Supreme Court justices(s), acting as the appellate division, may permit an appeal to be taken from such order. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

Certification under Appellate Rule 5(a) requires a prescribed statement from the trial court why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court's sound discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Permitting the appeal to proceed is at the appellate court's discretion after the trial court's discretionary Appellate Rule 5(a) certification. It is only in exceptional circumstances that the trial court should certify an interlocutory order for immediate appeal. In sum, for the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission for the appeal to go forward. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

An order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a) and is thus a nonappealable interlocutory order which is reviewable only upon final judgment or order. Nor is an order granting or denying a motion in limine to exclude testimony appropriate for certification, since it is an interlocutory ruling on evidence. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Under Appellate Rule 5(a), orders cannot be certified for immediate appeal unless they meet the standard set out therein: they must involve a controlling question of law as to which there is substantial ground for difference of opinion such that an immediate appeal from the order may materially advance the ultimate termination of the litigation, and when the orders in question do not meet this standard, the request for certification must be denied. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of

consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

An accused cannot file interlocutory appeals from orders denying motions to suppress evidence, orders granting or denying discovery, orders denying or granting a transfer or change of venue and denial of motions challenging indictments on various grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The appellate procedure rules permit certain interlocutory appeals from the FSM Supreme Court trial division, but those rules may not apply to appeals from the Kosrae State Court. In civil cases, appeals may be taken from all final decisions of the Kosrae State Court. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Although many jurisdictions authorize prosecution appeals when a trial court's interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

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).

A trial court order that stated that if certain conditions occurred it might modify an injunction was not an appealable order under FSM Appellate Rule 4(a)(1)(B) because further proceedings were needed before it became an order modifying an injunction and thus an appealable order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Since under Kosrae state law a party may appeal from the Kosrae State Court to the appellate court from an interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction, an appeal from a Kosrae State Court order granting a preliminary injunction is thus an appeal to the FSM Supreme Court appellate division that is permitted by Kosrae state law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Since a party in the Kosrae State Court may appeal to the appellate court from an interlocutory order

granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the FSM Supreme Court appellate division has jurisdiction over an appeal of a Kosrae State Court preliminary injunction. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Normally, a partial summary judgment is not appealable because only final judgments and orders can be appealed. A decision finding liability but not determining the amount of damages is not a final order or judgment and thus usually not appealable. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Since a party in the Kosrae State Court may appeal to the FSM Supreme Court appellate division from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the court can exercise jurisdiction on this basis over a partial summary judgment granting an injunction even if there was no final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Absent one of the limited exceptions to the final order or judgment rule found in Appellate Rule 4(a)(1)(B) through (E) applying, the appellate division does not have subject-matter jurisdiction over an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The FSM appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases and any other civil case in which an appeal is permitted by law. Permission may also be sought for an interlocutory appeal pursuant to Rule 5(a). Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

FSM Appellate Rule 5(a), which provides another vehicle for overcoming the jurisdictional impediment regarding an interlocutory appeal, is unavailable when the required certification from the trial court, setting forth why an interlocutory appeal should be allowed, is not present. Certification under Appellate Rule 5(a) requires the trial court's prescribed statement why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court's discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. It is only in exceptional circumstances that the trial court should certify an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

For the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission to go forward. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appeals are not permitted when the appeal is over issues involving steps moving toward a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions, is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy, which dictates against piecemeal appeals from the same civil action. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appeal from a trial court order partially dismissing claims is premature when the interlocutory ruling leaves the remaining claims undisturbed. Only when a final decision is entered in the matter, does it ripen, in terms of an action which can properly be appealed. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

While the court would expect that if the grounds for certification of an interlocutory appeal existed, an aggrieved litigant seeking appellate review would move fairly promptly for certification, no rule requires that or sets a time limit for a motion to certify. While prejudice to the non-movants does not, by itself, make the motion untimely, it will be a factor to consider when determining whether a certification would materially advance the litigation's ultimate termination, and thus whether an order should be certified under Rule 5(a). FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570-71 (Pon. 2016).

If a trial court order is certified, there is then a jurisdictional time limit of ten days within which the party seeking appellate review must file an application with the appellate division requesting permission to appeal. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 n.1 (Pon. 2016).

In order to certify an interlocutory trial court order as one from which a litigant may apply for permission to appeal, the trial court must be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

Certification must be denied when an immediate appeal from the interlocutory order would retard, rather than materially advance, the litigation's ultimate determination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

When an interlocutory order does not contain controlling questions of law over which substantial grounds for exist for a difference of opinion and when an immediate appeal would not materially advance the litigation's ultimate termination, a motion to certify the order for a possible interlocutory appeal must be denied. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

Whether FSM Development Bank officials can be considered public officers for the purpose of Rule 25(d)(1) is neither a controlling issue of law nor a matter of first impression. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

An order will not be certified when, even if it involved a controlling question of law, there is no substantial ground for a difference of opinion and when an immediate appeal of the issue would only retard, not materially advance this litigation's ultimate termination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Factual disputes are not appropriate for Appellate Rule 5(a) certification. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal, it is thus a nonappealable interlocutory order reviewable only upon final judgment or order. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

If the supposed controlling issue involves facts over which there is a substantial ground for difference, then Appellate Rule 5(a) cannot be used. Rule 5(a) appeals can be maintained only when it is the controlling question of law that is in dispute, not when the dispute is over factual matters. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

The appropriate time to seek appellate review of a Rule 37 expense award would be after final judgment. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

In an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

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. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

– Dismissal

The appellant's tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant's brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

It is within the court's discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party's efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

When appellants to the Chuuk State Supreme Court appellate division have made little or no effort to comply with any of the requirements of Appellate Rule 10, their appeals are due to be dismissed. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When, in a three-year old criminal appeal, notice was served requiring appellant's opening brief to be filed and served by a certain date and the notice further stated that failure to do so would be grounds for dismissal of the appeal, no brief was ever filed and a motion bordering on frivolous was filed for more time, the motion may be denied and the case is remanded to the trial division for additional proceedings,

including sentencing, as is provided for by law. Reselap v. Chuuk, 8 FSM R. 584, 586-87 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date for oral argument and for filing appellant's opening brief, that stated that failure to do so would be grounds for dismissal. Os v. Enlet, 8 FSM R. 587, 588 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant's failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appellee's oral motion at oral argument to dismiss for appellant's failure to prosecute the appeal in accordance with the appellate rules may be denied because he has waived any objections by his delay in raising procedural matters until the time set for oral argument and by not complying with the appellate rule concerning motions. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant's brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants' counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

A practicing attorney is expected to know the rules and abide by them. Nevertheless, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect. O'Sonis v. Bank of Guam, 9 FSM R. 356, 361-62 (App. 2000).

The Chuuk State Supreme Court's authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

An appellant may dismiss his own appeal upon such terms as may be agreed by the parties or fixed by the court. An appellee may not take over and prosecute an opposing party's appeal because he would be contesting an issue that he had never before challenged. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk's notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal's dismissal. Cuipan v. FSM, 10 FSM R. 323,

325 (App. 2001).

It is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

Good cause exists to grant an appellee's motion to dismiss when the appellant's failure to comply with the Rules has postponed the final resolution of the case, forestalled the possibility that the defendant would be confined to serve her sentence, and undermined the policy of finality. Cuipan v. FSM, 10 FSM R. 323, 327 (App. 2001).

When an action was filed as an appeal under Kosrae State Code § 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Rule 3(a) does not require the dismissal for failure to comply with the procedural rules, but merely permits it in the proper case. Not every appeal which fails to comply with the time requirements in Rules 10, 11, and 12 must be dismissed because the rules are stated in permissive, rather than mandatory language. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Because an appellate court is not required to dismiss every appeal which does not meet each of the time limitations in the rules, some lesser appropriate action or sanction should be tried first instead of opting for the most extreme sanction of dismissal. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Generally, dismissal of an appeal for failure to comply with procedural rules is not favored, although Rule 3(a) does authorize it in the exercise of sound discretion. That discretion should be sparingly used unless the party who suffers it has had an opportunity to cure the default and failed to do so. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

When there is no allegation that the law firm's omissions in the appeal were anything but inadvertent and no evidence that they were made in bad faith, when the defect was cured promptly once the law firm had notice of it, when every indication is that a lesser sanction than dismissal would have assured compliance with Rule 10(b), and when the appellee could not have been misled or prejudiced because the statement of issues had not been timely filed and did not suffer any prejudice because of the default, none of the factors that should have been considered weigh in favor of dismissal. All weigh in favor of a lesser sanction or none at all. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

That appellant's counsel and the members of his law firm are experienced attorneys and have practiced law long enough in the court is insufficient to dismiss an appeal when the appellant has promptly cured any defects in the appeal, when the default was not willful, when there was no prejudice to the appellee, and when the appellant's only failure was his untimely filing of the statement of issues and the certificate that a transcript would not be needed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

While practicing counsel are expected to know the rules and abide by them, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When neither Rule 3(a) nor counsel's conduct in the appeal directs a dismissal, the preference for resolution of matters on the merits should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

If an appeal is one where the issues on appeal involve factual findings and no meaningful review is possible without a transcript, the appellate court is left with no choice but dismissal when the appellant has not provided one. But even then dismissal would likely come only after an appellee's motion or when the time had come for a court's decision on the merits. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

Where a single justice abused his discretion when he denied motions to vacate the dismissal and to enlarge time to file Rule 10(b) statements, the appeal will be reinstated and the Rule 10(b) statements considered properly filed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

An appellee's trial court motion to dismiss an appeal on the ground that it is moot must be denied for want of jurisdiction of the trial court to rule upon it. It is a matter for the appellate division to consider, if raised there. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

Violation of filing a timely notice of appeal requires dismissal of the appeal due to lack of jurisdiction. However, other violations of appellate requirements may be subject to dismissal or other sanctions. Authority to dismiss a case on appeal on procedural grounds is discretionary. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

If it appears that the court lacks subject matter jurisdiction the case will be dismissed. Failure to file the notice of appeal within the statutory time will result in dismissal of the appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

An appellate panel cannot dismiss an appeal not assigned to it even though the parties to that appeal have consented to its dismissal. Nikichiw v. O'Sonis, 13 FSM R. 132, 136 (Chk. S. Ct. App. 2005).

A single justice does not have the power to dismiss a cross-appeal when the cross-appellant's brief allegedly fails to make proper citations to the record as required by the appellate rules; includes extraneous matters; and has an inadequate appendix and which is alleged to be without merit on its face. A single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the timing requirements of the appellate rules, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not

grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely affect the appellant's power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant's burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) is the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When the appellee has suffered no prejudice due to the appellant's neglect to file an appendix and cite to the record since the appeal relates primarily to legal issues that may be addressed using only the appendix filed by the appellee, the appeal will not be dismissed for the appellant's negligence. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

An election contest appellant's failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When the ground for the appellee's motion to dismiss is that the appeal was filed prematurely and this is the same ground, based on essentially the same facts, as the same appellee's motion to dismiss a different appeal case and that motion was granted and that other appeal dismissed, the appellee's motion to dismiss this appeal will be granted and this appeal will be dismissed and this appeal will also be dismissed on the ground that it has been abandoned since the appellant indicated orally he intended to dismiss his appeal and then filed no response to the appellee's motion to dismiss. Asor v. National Election Dir., 13 FSM R. 205, 206 (App. 2005).

Even if an opposition to a motion to dismiss is not filed, the court still needs good grounds before it can grant the motion. Asugar v. Edward, 13 FSM R. 215, 218 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

A single appellate judge's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

The court is reluctant to dismiss an action based on counsel's behavior. An adjudication on the merits allows the parties to have a reasonable opportunity to present their claims and defenses and is generally preferred over dismissal for procedural reasons. For this reason, dismissal based on counsel's misconduct is generally avoided. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

When the appellee filed a motion to dismiss the matter on January 19, 2007 and the appellants were

served on January 19, 2007 and chose not to file a response to the motion, the appellants' failure to respond also offers grounds for dismissal. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another's with the result that he would be declared a winning candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

When an appellant filed its opening brief four years ago; and when the appellees would not stipulate to the record on appeal so the appellant, through its motion on the state of the record, sought relief to move things forward so that the appellees could prepare their briefs, the appellant has tried to prosecute the appeal and its appeal will not be dismissed on that ground. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When an appellee does not contend that the appeal from the trial division to the appellate division was untimely, or is not from a final judgment or order, or that it is a case under the exclusive jurisdiction of the national courts, but only contends that the trial division did not have the jurisdiction to grant the relief the appellant sought, the appellee's motions to dismiss will be denied because the appellate court sits in review of the trial court decision, and a claim that the trial court does, or does not, have jurisdiction to grant the relief sought is an argument on the appeal's merits and not a ground to dismiss because the appellate court lacks jurisdiction to review the trial court. The appellees may raise, if appropriate, any of the grounds they cited for dismissal, in their brief(s) on the merits. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant's claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive's ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

When the opinion and the writ of prohibition issued in a different appeal has already granted the appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text and the cover of the appellant's brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and that of any reply brief gray, and except by court permission, the parties' principal briefs must not exceed 50

pages, and the reply briefs not exceed 25 pages, when the appellant's briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant's brief before it submitted its own brief, the appellee's request to strike the appellant's brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Although an appeal's dismissal for failure to comply with procedural rules is not favored, Appellate Procedure Rule 3(a) does authorize dismissal in the exercise of sound discretion. That discretion, however, should be sparingly used unless the party who suffers it has had an opportunity to cure the defect and failed to do so. Moreover, before dismissing an appeal, the court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance and the degree of prejudice the opposing party has suffered because of the defect. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 394 (App. 2007).

When the July 25, 2007 State Court order denying the appellants' motion for reconsideration ended all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court's findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee's attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel's name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal's defects are not of a jurisdictional nature that would require dismissal. Kosrae v. Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence to Appellate Rule 3's requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant's intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant's right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court's return of service shows that the Kosrae Attorney General's Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute's thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss, but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months

late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules' timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice's power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants' failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed,

whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules' timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants' arguments, a full appellate panel finds the single justice's reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The parties to an appeal may, without any court action, voluntarily dismiss the appeal at any time. If the parties sign and file with the appellate division clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and pay whatever fees are due, the clerk must enter the case dismissed, but no mandate or other process will issue without a court order. To be effective, a signed and filed voluntary dismissal must included specific terms about payment of costs. Lewis v. Rudolph, 16 FSM R. 278, 279-80 (Chk. S. Ct. App. 2009).

A dismissal, although signed by counsel for all parties and containing an agreement about settlement terms, which it was not necessary to include to effect the voluntary dismissal, but which did not specify the terms as to payment of costs, would have if it had contained terms as to the payment of costs, been effective to dismiss the appeal without any court action except the clerk's entry of dismissal. Any settlement terms other than costs included in a stipulated dismissal would not form an order of the court, but would be a private agreement between the parties, which would not have to be included in the notice of voluntary dismissal. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules' time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, an appeal's dismissal for failure to comply with procedural rules is not favored, and the court's discretion to dismiss an appeal should be sparingly used unless the appellant has had an opportunity to cure the default and failed to do so. Before dismissing an appeal, a court should therefore consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants' subsequent failure to file a brief without good cause against the clerk's apparent delay in notifying counsel of the record's certification and availability, and against the court's preference to hear an

appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. 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).

An appeal will not be dismissed because the appellant filed his statement of issues on Wednesday, April 8, 2009, when, under Appellate Rule 10(b)(3), the deadline for filing the statement of issues would have been April 9, 2009; when a court order shortened it to noon "Wednesday April 7, 2009," but this was a typographical error since April 7, 2009 was a Tuesday and Wednesday was April 8, 2009; and when the movant has not asserted that he was prejudiced by the April 8, as opposed to April 7, filing and because the court cannot see how he would have been prejudiced by receiving the statement of issues one day later. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 412, 413 (App. 2009).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 412, 413 (App. 2009).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief late, the dismissal of his appeal is proper. Lewis v. Rudolph, 16 FSM R. 499, 501-02 (Chk. S. Ct. App. 2009).

When the appellants never moved for an enlargement of time to file their brief, either before or after any of several brief-filing deadlines; when the reason given orally for the delay – a problem with the trial division docket entries record – hardly constitutes extraordinary circumstances or even good cause since that document was in the appellate file as an attachment to the clerk's November 27, 2008 notice and since the court's January 27, 2009 order was predicated on the certification of the trial division docket and record; and when, considering that land is so important in Chuuk and underlying the appeal there is a land case, it was inexplicable that the appellants were not more diligent in prosecuting this appeal, the appellees' motion to dismiss will be granted. Lewis v. Rudolph, 16 FSM R. 499, 502 (Chk. S. Ct. App. 2009).

When deciding a Rule 31(c) motion to dismiss, the appellate court considers factors including the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. But when an appellant has not served on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review; when there was no excuse for the appellant not knowing that its brief was due August 12, 2009; and when there was no excuse for its seventeen-month delay in requesting an English-language transcript, the appellant's neglect is inexcusable, and since the appellant's misleading statement that it had requested an English-language transcript but the Kosrae clerk had not provided it was completely unacceptable, the appeal will be dismissed. Kosrae v. Smith, 16 FSM R. 578, 580 (App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court's judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party's failure to comply with the appellate rules' timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants' opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

While a vacated sua sponte dismissal without notice may mean that a later dismissal after notice is more likely to be a further abuse of discretion than a dismissal made on the court's own motion but only after notice, it does not automatically follow that every dismissal after a vacated sua sponte dismissal must also be an abuse of discretion. Nevertheless, courts should tread carefully here because, to an impartial observer, the process may by then seem tainted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A security bond is not a requirement to perfect an appeal although Appellate Rule 7 permits the trial court appealed from to require a bond for appellate costs if the trial court finds it necessary. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The absence of a bond to stay the execution of a money judgment while the appeal is pending would not be a ground for dismissal of an appeal. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

When the appellees seek to have the appeal's merits decided without the benefit of briefing and argument because the appellees' ground for dismissal is the basis on which the lower court decided the case and which is therefore either the issue or one of the issues that the appellants will raise, brief, and argue on appeal, the court will not permit the appellees to short circuit the appellate process. Once the appellants brief the issue, the appellees must, in due course, be prepared to brief and argue it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days

following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

An appellant's failure to obtain a stay does not affect an appeal's validity or the appellate court's jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Allegations that the appellants' counsel have or had a conflict or conflicts are not a ground on which an appeal can be dismissed. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

A five-year old appeal will be dismissed when the appellant has failed to diligently pursue the matter and has not filed an opening brief and no counsel filed an appearance even though he intends to pursue the appeal through other counsel. The appellees' renewed motions to dismiss are granted unless counsel has entered an appearance on the appellant's behalf by August 24, 2012 and unless that counsel has filed an opening brief by September 13, 2012, and if these events do not occur, the appeal is automatically dismissed without further order of the court. Kuch v. Mori, 18 FSM R. 337, 339 (Chk. S. Ct. App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When the property was lawfully transferred and this transfer is not a part of what is being appealed because the appellants are appealing the minimum sale price and when the mortgagee does not have title to the land but only a lien, the court will reject the appellants' claim of lack of subject-matter jurisdiction based on the exception for where an interest in land is at issue. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court's dismissal of the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time

period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Grounds for dismissal that go to either the merits of the preliminary injunction or the merits of the underlying case are not grounds for dismissal before the parties brief and argue the appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

A contention that the appeal should be dismissed because the appellants filed their brief on November 12, 2013, instead of on the court-ordered November 8, 2013 deadline is frivolous. An appeal's dismissal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Andrew v. Heirs of Seymour, 19 FSM R. 331, 336-37 (App. 2014).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and the extent of appellants' efforts in mitigation. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the Rules resulting in prejudice to the opposing party, this policy preference for adjudications on the merits does not negate all other considerations or make the procedural Rules a nullity. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice's power to dismiss an appeal upon stipulation of the parties or upon a party's failure to comply with the Rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

The court will, on the appellees' motion, dismiss an appeal when no opening brief has been filed or an enlargement sought and the court has found the appellants have exhibited severe disregard for the Appellate Procedure Rules' timing requirements and as a result of this, the appellees have been prejudiced.

Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although Appellate Rule 3(a) authorizes dismissal, courts, in the exercise of sound discretion, should, especially when a failure to comply with procedural rules is in issue, be particularly prudent in issuing such a ruling until the recalcitrant party has had an opportunity to remedy the defects. A lesser sanction is appropriate when the noncompliant party's conduct is merely inadvertent and undue prejudice does not redound to the opposing party. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants' appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants' "amended" brief. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

A single justice may dismiss an appeal for an appellant's failure to comply with the timing requirements for filing a notice of appeal that are set forth within the Appellate Rules. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

When, given the absence of a timely filed appeal from a final decision, the appellate court has no jurisdiction, the appellee's motion to dismiss the appeal will be granted, thereby rendering moot all other motions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 346 (App. 2016).

The threshold determination of subject-matter jurisdiction may be raised at any time by a party or by the court. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court's discretion to dismiss an appeal for late filing of an appellant's brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Dismissal at the appellate level is undoubtedly a harsh sanction and the court should exercise its discretion to dismiss under Appellate Rule 3(a) sparingly. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel's inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

When the appellants have had ample time within which to file their brief after the court's February 18th

order, much less engage in a dialogue with opposing counsel about what parts of the trial transcript need to be reproduced and made a part of the record and when the September 27th due date for filing a response to the appellee's motion to dismiss has expired and no enlargement was sought by the appellants, the appellee has been prejudiced by the resultant inordinate delay and the appeal may be dismissed by a single justice for failure to comply with the Appellate Rules' timing requirements. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk's notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal's dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant's failure to file on time; and the extent of appellant's efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

An appellate court will, on an appellee's motion, dismiss an appeal when no opening brief has been filed and the appellants have severely disregarded the Appellate Procedure Rules' timing requirements and the appellee has been prejudiced as a result. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

The appellants' tardiness in filing their brief, with no explanation offered in response to a motion for dismissal, constitutes a ground for dismissal of an appeal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

An appeal will be dismissed when the filing of the appellants' brief has been delayed over two years with no likely expectation of an imminent filing or indication that an opening brief will ever be filed; when the prejudice to the appellee is the further difficulty, expense, and delay in having its money judgment satisfied; when, earlier, the appellants' grounds for seeking an enlargement of time to file their brief were a pending Rule 60(b) motion and a pending or expected payment to reduce the judgment amount, neither of which are relevant now because the Rule 60(b) motion was denied well over a year ago and the loan principal credit occurred before then; when the appellants have thus had, even though no enlargement of time or stay was granted, more than ample time to complete an opening brief, but have not done so and no reasons have been given for this excessive delay; and when the appellants have made no attempt to mitigate. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

It is within a single justice's power to dismiss, on motion, an appeal because of the appellants' failure to comply with the Appellate Rules' timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

– Frivolous Appeals

If the appellate court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

Appellees intending to ask for Rule 38 costs and damages because the appeal is frivolous must,

although the rule does not require a motion filed separately from the brief, give the appellant more notice than first raising the issue at the end of appellees' oral argument. Phillip v. Moses, 10 FSM R. 540, 546-47 (Chk. S. Ct. App. 2002).

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

When the court refused to allow the original petition for a writ of mandamus to be amended and provided that the amended petition would be considered a separate petition involving the same parties, the petitioners' pursuit of the petition after the order denying amendment did not make the original petition frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

Merely being a case of first impression does not automatically make a petition not frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440-41 (App. 2004).

Rule 38 sanctions will not be awarded when the petition was not wholly without merit or was frivolous since the constitutional issues relating to a privacy right had not been previously ruled upon. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

In all cases in which an appellee seeks Rule 38 damages, an appellee shall file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

When a petition was not wholly without merit or groundless, or when the petition was not frivolous since the issues raised had not previously been ruled upon when they were raised in the petition and when there was also some question raised as to how appellate review of the issues could be sought, whether by writ of

mandamus or by an interlocutory appeal, the petition is not frivolous and Rule 38 damages will not be awarded. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

If the Supreme Court appellate division determines that an appeal is frivolous, it may award just damages and single or double costs, including attorney's fees, to the appellee. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

Determining whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462-63 (App. 2004).

An appeal is frivolous when the result is obvious, or when the appellant's arguments are wholly without merit or groundless, or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

When an action was filed based upon the application or good faith argument for the extension of the Berman rule and upon the contention that the collateral order doctrine allowed an interlocutory appeal; when no previous decisions had specifically dealt with the application or limits of the collateral order doctrine and related issues; and when there was also some question raised as to how a party should seek appellate review of the issues (by writ of mandamus or by an interlocutory appeal), the appeal was not wholly without merit or groundless, or frivolous and no Rule 38 attorney's fees will be granted. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

In all cases in which an appellee seeks Rule 38 damages, an appellee must file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

– In Forma Pauperis

An appellant who desired to proceed on an appeal in forma pauperis but failed to file an affidavit showing his inability to pay and who failed to bring his in forma pauperis motion to the attention of the trial division, is deemed to have abandoned his request or at least waived any right he may have had to proceed in forma pauperis. Reselap v. Chuuk, 8 FSM R. 584, 585-86 (Chk. S. Ct. App. 1998).

Generally, only natural persons may proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

In order to proceed in forma pauperis on appeal, an appellant must file a motion in the court appealed from together with an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. Lebehn v. Mobil Oil

Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant's inability to pay fees and costs or to give security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517-18 (Pon. 2002).

For an indigent litigant to proceed on appeal in forma pauperis, the appeal must be made in good faith and not be frivolous. The two requirements are related. "Good faith" is demonstrated when a party seeks appellate review of any issue "not frivolous." For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous. Probable success on the merits need not be shown. The court only examines whether the appeal involves legal points arguable on their merits (and therefore not frivolous). The existence of any nonfrivolous or colorable issue on appeal requires the court to grant the motion to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Raising nonfrivolous issues on appeal entitles an indigent to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

If the court appealed from grants the motion to proceed in forma pauperis, the party may proceed without further application to the FSM Supreme Court appellate division and without prepayment of fees and costs in either court or giving security therefor, except when the Public Defender Office or Micronesian Legal Services Corporation represents an indigent party the transcript fee is reduced to $1.25 per page, to be paid by the public agency, and not by the party personally. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

Being allowed to proceed in forma pauperis only relieves an appellant from prepayment of fees and costs, not from ultimate liability for those costs. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

It is a matter to be resolved between the court reporters and the judicial branch whether the judiciary pays the costs for in forma pauperis litigants' transcripts. An in forma pauperis litigant is not required to prepay transcript costs, although if the in forma pauperis litigant is represented by the Public Defender or Micronesian Legal Services Corporation then that agency must prepay $1.25 per page. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant is not required to tender payment in order to receive the transcript he has ordered. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

A general court order that provides that when an indigent party is represented by the Office of the Public Defender in *in forma pauperis* proceedings, the transcript fee will be reduced to $1.25 per page (payable by the public agency and not by the defendant personally) has no effect on Appellate Procedure Rule 24(a). It merely establishes a reduced transcript fee to be paid by the Office of the Public Defender when it represents an indigent party. It does not automatically classify every client of that office as an indigent party. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

In order to proceed in forma pauperis on appeal, an appellant must file an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

To show that a party is indigent the affidavit of a person seeking *in forma pauperis* status must contain more detail than a mere recitation that the affiant is poor and cannot pay. The affidavit should, at minimum, outline the affiant's income, necessary expenditures and liabilities, savings, the value of any real or personal property the affiant owns individually, and the value of the affiant's ownership interest in any real or personal property in which the affiant shares ownership with others. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

When seeking *in forma pauperis* status, a party's affidavit, besides containing a financial statement, must also contain the party's belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. This is because for a litigant to proceed on appeal in forma pauperis, not only must the litigant be economically eligible, the appeal must be made in good faith and not be frivolous. For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

The court would be leery of awarding in forma pauperis status to someone who is paying private counsel. Ned v. Kosrae, 20 FSM R. 147, 157 (App. 2015).

– Mandate

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

The trial court's power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal's pendency, until the appellate division's mandate issues. The trial court's power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

– Motions

That fee arrangements had not been made is not good cause in support of a motion to enlarge time for filing appellee's brief when the motion is filed well after the brief was due and after oral argument was held. Paul v. Celestine, 3 FSM R. 572, 574 (App. 1988).

The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the

appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM R. 344, 345 (App. 1990).

A motion to strike a single appellate justice's dismissal of an appeal may be set for oral argument and determination by an appellate panel. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A motion filed pro se in the appellate division can be denied on the basis that it was filed pro se without leave of court. In the appellate court, unlike the trial court, a party does not have an automatic right to appear pro se and must seek permission. Wiliander v. National Election Dir., 13 FSM R. 199, 204 n.4 (App. 2005).

A motion may be denied as moot when the court has already dismissed the appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A single Supreme Court appellate division article XI, section 3 justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, although a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the appellate rules' timing requirements. A single justice's action may be reviewed by the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Appellate Rule 27(c)'s use of the word "may" indicates that the review by the full appellate panel of all single justice orders is not mandatory. The word "may" instead of "shall" indicates some discretion. It does not, however, indicate that the discretion lies with the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Rule 27(c) generally restricts a single justice to issuing procedural orders and (with two exceptions) from dismissing appeals. Any action that a single justice takes can be reviewed by the court, on motion by the aggrieved party. Even when the Appellate Rules authorize single appellate judges to entertain requests for relief, the single appellate judge's decisions remain subject to correction by the appellate court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

A single appellate judge's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The discretion indicated by the word "may" in Rule 27(c) lies primarily with the parties and makes it mandatory for the full appellate panel to review a single justice order when an aggrieved party asks it to. It is not mandatory that the full appellate panel review every order made by the single justice. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The full panel's review of a single appellate judge's order can be on the papers and the decision announced beforehand either in writing or orally at the start of oral argument on the merits; or the panel can chose to permit the parties a short time to argue and then take a short recess and then announce its decision and then proceed to the main argument on the merits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

Motions may be decided without oral argument. Even an appeal's merits may be submitted on the briefs and decided without oral argument if the parties agree. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

The time period for opposing a motion is seven days. But if service of the motion is made by mail, six

additional days are added to the response period. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 n.2 (App. 2007).

The appellate court, for good cause shown, may, upon motion, enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time. This differs significantly from the provisions found in the Civil and Criminal Procedure Rules, both of which require a party wishing to enlarge the time period for undertaking an act once the original time period for undertaking the act has expired to demonstrate that the failure to act within initially prescribed time period was the result of excusable neglect. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 362 (App. 2007).

A party may file a response in opposition to a motion within 7 days after service of the motion, so if the motion is served on that party by mail, the party has six added days to file and serve a response. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

The action of a single justice may be reviewed by a full panel of the appellate division. In re Parcel 79T11, 16 FSM R. 24, 26 (App. 2008).

Motions may be decided without oral argument. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The good cause standard is a broader and more liberal standard than excusable neglect standard. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 n.5 (App. 2008).

A single Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate procedure rules may properly be sought by motion. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party's failure to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss, but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16

FSM R. 100, 113 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

The good cause standard is a broader and more liberal standard than the excusable neglect standard. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 n.5 (App. 2008).

A single justice of the Supreme Court appellate division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules' timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant's failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice's power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants' failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

A full panel's review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants' arguments, a full appellate panel finds the single

justice's reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Motions may be decided without oral argument. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A "Report" that asks for relief, is a motion because any request or application made to the court for relief can only be considered a motion. Since all papers, including motions, must be served on the other parties, when there was no indication that this "Report" had been served on the other parties, the court can disregard it as not properly before the court. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

No one should ever presume that any court will reflexively or automatically grant a continuance whenever a motion is filed seeking one. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

With certain limitations, a single justice may entertain and may grant or deny any request for relief which under the rules may properly be sought by motion, and a motion for enlargement of time properly falls within such request for relief. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 26(c) does not apply to an appellant's opening brief since the prescribed period for the brief's filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant's opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since a single justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, a motion to strike the appellant's appendix or require the submission of translation properly falls within such request for relief. Setik v. Ruben, 17 FSM R. 301, 302 (App. 2010).

The appellants' motion to exclude evidence not submitted in the trial court is moot when the appellate court did not rely on that evidence in reaching its decision. Stephen v. Chuuk, 17 FSM R. 453, 457 (App. 2011).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party's failure to comply with the appellate rules' timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

Motions for enlargement of time to file briefs are timely because they are filed before the briefs are due when they are filed on the same day the briefs were due. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

An early enlargement motion can be useful in showing good faith, and a motion two or three days

beforehand may be most helpful if it can provide an accurate estimate of the time needed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

"Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule or order, to show why a request should be granted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

While merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time (although when other factors are also present, the neglect may be excusable), the "good cause" standard is a broader and more liberal standard than "excusable neglect." Since the "good cause" standard frees courts from some of the restraints imposed by the excusable neglect requirement, there thus would be times when being a busy lawyer would satisfy the good cause standard where it obviously could not satisfy the higher excusable neglect standard. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

Even if counsel were unaware of an unpublished decision announcing that in the future enlargements would not be granted without good cause, Kosrae Appellate Rule 9(b) is clear on its face that enlargement is not automatic and will be granted only for good cause shown. Thus, he cannot claim ignorance of the appellate rule and of its requirement to show good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants' enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court's discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

An opposition to a motion to enlarge that is not entitled as a motion to dismiss but which specifically asks the court to dismiss the appeal is a motion to dismiss because a thing is what it is regardless of what someone calls it. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not

a determination having preclusive effect on the appeal's validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single appellate justice does not have the authority to sanction attorneys. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The appellate division may decide motions without oral argument. Berman v. Pohnpei, 18 FSM R. 418, 420 n.1 (App. 2012).

Motions may be decided without oral argument. Kuch v. Mori, 18 FSM R. 442, 443 (Chk. S. Ct. App. 2012).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Appellate Rule 26(b) grants the appellate division broad discretion to grant an extension of time upon a showing of good cause, but enlargement is not automatic and will be granted only for good cause shown. "Good cause" is a legally sufficient reason or the burden placed on a litigant, usually by court rule or order, to show why a request should be granted or an action excused. In making its inquiry into a movant's good cause, the court's primary consideration should be the diligence of the party seeking the enlargement. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

There are times when being a busy lawyer would satisfy the good cause standard. The court's discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

When a motion is served on opposing counsel by mail, the seven days allowed for responses to motions is enlarged by six more days. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

When a motion for costs and attorney's fees contains no supporting grounds for this request in the motion's text, the motion will be denied without prejudice to any claim for costs taxable under Appellate Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc'ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants' motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

It is within a single justice's power to dismiss, on motion, an appeal because of the appellants' failure to comply with the Appellate Rules' timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

– Notice of Appeal

Under the FSM Appellate Rule 4(a)(1), a notice of appeal must be filed within 42 days after entry of the judgment. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The proper procedure, in accordance with Kosrae State law and the FSM appellate rules, in filing a notice of appeal from a decision of the Kosrae State Court is to file notice in both Kosrae State Court and the FSM Supreme Court, either with the trial division in Kosrae or directly with the appellate division. Tafunsak v. Kosrae, 6 FSM R. 467, 468 (App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. The trial court is then divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it. Walter v. Meippen, 7 FSM R. 515, 517 (Chk. 1996).

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).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants' petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

Appellate Rule 4(a)(2), which allows a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order to be treated as filed after such entry and on the day thereof, is designed for cases of premature appeals where it is known that the final order or judgment to be entered will merely reflect the earlier decision. It specifically does not apply when Rule 4(a)(4) does. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, except for the trial court to take action in aid of the appeal, such as an application for release from jail pending appeal, a motion for stay, taxing costs, considering and denying (but not granting unless

remanded) a Rule 60(b) relief from judgment motion. Bank of Guam v. O'Sonis, 9 FSM R. 197, 198-99 (Chk. 1999).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record no matter how inadequate the notice because it raises a question addressed to the appellate court's jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 197, 199 (Chk. 1999).

Rule 3(b) is permissive as to filing a joint notice of appeal. No provision in the rule makes this decision irrevocable. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

Rule 28(l) permits appellants to join in a single brief. Implicit in this rule is an appellant's right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 466-67 (App. 2000).

The notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, and considering and denying a Rule 60(b) relief from judgment motions (but not granting a Rule 60(b) motion unless case remanded). Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, with some exceptions all characterized as acts in aid of the appeal, such as motions for release from jail pending appeal, for a stay pending appeal, to proceed *in forma pauperis* on appeal, to tax costs, and the trial court may both consider and deny Rule 60(b) relief from judgment motions, but cannot grant one unless the case is remanded. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record, no matter how inadequate the notice is, because it raises a question addressed to the appellate court's jurisdiction and the notice of appeal's filing transfers jurisdiction to the appellate court. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A notice of appeal divests the trial court of jurisdiction except to act in aid of the appeal. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

The 42-day appeal period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division. A certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

A notice of appeal is typically a single page document that names the appellant and the other parties to the proceeding; indicates the order, judgment, or part thereof appealed from; shows the appellate division of the FSM Supreme Court as the court in which the appeal is brought; identifies counsel; and contains a certificate of service. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

The Chuuk appellate procedure rules require that a notice of appeal be filed with the clerk of the court of the Chuuk State Supreme Court trial division not later than 30 days after entry of judgment. Hartman v. Chuuk, 12 FSM R. 388, 393 n.8 (Chk. S. Ct. Tr. 2004).

By Kosrae statute and State Court Rules of Appellate Procedure, the notice of appeal from Land Court must state specific legal grounds upon which such appeal is based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 418-19 (Kos. S. Ct. Tr. 2004).

Following review of the transcript and record, appellants may also request to amend the issues stated in the notice of appeal from Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. The

appeal is then properly dismissed. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

Appellants must file a subsequent notice of appeal to perfect their right to appeal any of the issues raised by a later attorney fee award order. Appellants must take the necessary steps to perfect an appeal from the trial division's order awarding attorney's fees and to consolidate that appeal with the pending appeal on the merits. Felix v. Adams, 13 FSM R. 28, 29-30 (App. 2004).

A second notice of appeal adds nothing to an initial notice of appeal, when it purports to appeal the an earlier non-final – and hence nonappealable – order as well as the already appealed final judgment and is therefore nugatory. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 (Pon. 2004).

If a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. FSM v. Fritz, 13 FSM R. 85, 87-88 (Chk. 2004).

It might have been to a litigant's advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

A notice of appeal may be filed in either the trial division or the appellate division. A party has the right to represent herself pro se in the trial division (although that may not always be a good idea) and may file a notice of appeal pro se, but appellate division filings usually require an admitted attorney's signature. Goya v. Ramp, 13 FSM R. 100, 107 & n.7 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on vacation could either 1) draft a notice of appeal that her client could sign and file pro se in the trial division and mail it to her for filing; or 2) draft a motion to extend time to file a notice of appeal that her client could file pro se and mail it to her for filing; or 3) draft a motion to extend time to file a notice of appeal and mail it to the court for filing; or 4) draft a motion to file by facsimile and mail it to the court for filing, and then fax (and mail) a notice of appeal once she and her client have agreed to payment terms for an appeal. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

A motion to extend time to file a notice of appeal filed before the expiration of the 42-day appeal period can be made ex parte unless the court orders otherwise. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on an extended vacation, who learns that her client needs her to file an appeal three days before the end of the 42-day appeal period, could either draft and fax a notice of appeal along with a request to file by fax; or draft and fax to her client a notice of appeal that her client could sign and then file pro se in the trial division; or draft and fax a motion to extend time to appeal and mail it along with a notice of appeal; or draft and mail a motion to extend time to appeal along with a notice of appeal, any of which should obtain results before counsel's scheduled return. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc.,

13 FSM R. 159, 161 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys' fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

A properly filed notice of appeal transfers jurisdiction from the trial court to the reviewing court. The transfer of jurisdiction divests the trial court of any authority, except to act in aid of the appeal. Examples of actions which have been construed to aid an appeal include, but are not necessarily limited to: applications for release from jail pending appeal, applications for stay pending appeal, taxation of costs, and considering and denying, but not granting, except upon remand, Rule 60(b) motions for relief from judgment. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In criminal cases, a defendant's notice of appeal must be filed within 10 days after the entry of the judgment appealed from. Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The appellate court acquires jurisdiction over a case and the parties thereto, when a notice of appeal has been timely filed and the parties to the case before the inferior tribunal appealed from have been properly served the notice of appeal. No separate summons is required. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the

appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant's claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

Counsel's failure to serve the notice of appeal on the appellee's counsel is not fatal since the Chuuk Appellate Rules require that the clerk of the court appealed from must serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, so if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

An appellant's filing of a notice of appeal in the appellate division is not fatal to his appeal since if a notice of appeal is mistakenly filed in the Chuuk State Supreme Court appellate division, the appellate division clerk must note thereon the date on which it was received and transmit it to the trial division clerk and it will be deemed filed in the trial division on the date so noted, and thus, if the notice of appeal was not transmitted to the trial division (to be served by the trial court clerk on the other party), it was an error of omission on the appellate clerk's part, not the appellant's. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal from a final order or judgment is jurisdictional, and a notice of appeal filed before a final order or judgment has been entered is premature and untimely. The common exception is that a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order will be treated as filed after such entry and on the day thereof. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules' time constraints and thus protecting the client's interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM Supreme Court appellate division never acquired jurisdiction over the case. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The statute of limitations for filing an action is different and distinct from the time limits for filing an appeal from a Land Court or Land Commission decision. An appeal from a Land Court or Land Commission decision is a statutorily-created right. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A party may appeal a Land Court decision within 60 days of being served with a written decision. Before the Land Court Act of 2000, a party could appeal a Land Commission decision within 120 days of receiving notice of the determination. So, for the purpose of filing such an appeal, service of the written determination is a statutory requirement that begins the running of the appeals period. In other words, the service of the determination is a condition precedent to the running of the appeals period. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

A notice of appeal must be taken within 42 days after the date of entry of the judgment appealed from. The 42-day period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division and a certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

The time within which a party may file a notice of appeal is calculated from the date when the final order or judgment being appealed is entered. The deadline is not calculated from the date it was purportedly served on appellant's counsel. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

When the notice of appeal contains the names of both parties in its caption and designates one as the appellee, it is not necessary to repeat them in the text of the notice where one is referred to only as "appellee." Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The timely filing of a notice of appeal is jurisdictional, but timely certification of service is not. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee's attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel's name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal's defects are not of a jurisdictional nature that would require dismissal. Kosrae v. Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence

to Appellate Rule 3's requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant's intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant's right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The FSM Appellate Rules require a criminal defendant to file his notice of appeal within ten days of entry of the judgment of conviction, but the FSM Appellate Rules have no provision for prosecution appeals. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court's return of service shows that the Kosrae Attorney General's Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute's thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

A timely filing of a notice of appeal is jurisdictional and mandatory. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

The time to appeal a final order in a civil case is 42 days, but the time to appeal a criminal judgment is only ten days. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 (App. 2011).

When an appeal has been filed in the case, the trial court, in the absence of any authority indicating otherwise, no longer retains jurisdiction over the matter. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

Since, when appealing an FSM Supreme Court trial division decision, a party may, at its option, file the notice of appeal either with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or directly with the clerk of the FSM Supreme Court appellate division, where that party, appealing an FSM Supreme Court trial division decision, files a notice of appeal with the FSM Supreme Court trial division clerk in the Kosrae venue on February 22, 2011, and on February 25, 2011, files a notice of appeal with the appellate division clerk, the earlier, February 22, 2011 notice of appeal that was filed with the trial division clerk in Kosrae is the operative one. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

Since a notice of appeal is a paper that the clerk of the court appealed from – the Chuuk Sate Supreme Court trial division clerk – is required to serve on the parties, Appellate Rule 25(b), by its terms, does not apply, and the appellant need only timely file the notice with the court clerk. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant's fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

Since an appeal may be taken by filing a notice of appeal with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant's option, directly with the clerk of the FSM Supreme Court appellate division, a notice of appeal from the Kosrae State Court may be filed with the FSM Supreme Court trial division clerk on Kosrae instead of the appellate division clerk on Pohnpei. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

When the FSM Supreme Court has not previously considered whether, under FSM Appellate Rule 4(a)(4), a procedural rule which is identical or similar to, or which is drawn from, a U.S. counterpart, Kosrae Appellate Rule 19(a) is a comparable state court rule, it may look to U.S. sources for guidance in interpreting the rule. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.2 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the

one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

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).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When the record shows that the appellant never filed for an extension with the FSM Supreme Court trial level on or before December 28, 2012, which is 30 days after the expiration of the 42-day appeal period, the November 29, 2012 notice of appeal is untimely. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but the FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Only the trial division has the authority to waive or extend the period to file the notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains

jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. In re Sanction of George, 19 FSM R. 131, 132 (App. 2013).

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

In civil cases, appeals may be taken from all final decisions of the Kosrae State Court by the filing of a notice of appeal within forty-two days after the date of the entry of the judgment or order appealed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

While a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order must be treated as filed after such entry and on the day thereof, other prematurely filed notices of appeal have no effect and never transfer jurisdiction to the FSM Supreme Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney's own name and as a real party in interest. When the attorney was named in the notice of appeal's caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the trial court issued an order awarding attorney's fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review, because the order appealed from established only the pecuniary responsibility for opposing counsel's reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court's order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney's fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

A timely notice of appeal from a final decision is a prerequisite to jurisdiction over an appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the

case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An "Amended Notice of Appeal" that appears in the appellant's appendix, but that was not served upon the appellees or filed with the court, clearly fails to comply with the timing requirements for filing notices of appeal and is not properly before the court. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court is the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal, but it serves the purpose of commencing the Land Court's preparation of the transcript and record. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of the written decision service upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

– Notice of Appeal – Extension of Time

Upon showing of excusable neglect or good cause, Rule 4(a)(5) permits extension of time for filing notice of appeal, upon motion made within 30 days after expiration of the 42 days prescribed in Rule 4(a)(1). Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

A court has no authority to grant enlargement of time to file notice of appeal pursuant to motion filed after the maximum period of 72 days. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

The Federated States of Micronesia Supreme Court appellate division may not enlarge the time for filing of a notice of appeal. Any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. FSM Appellate Procedure Rule 4(a)(5) provides that the court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time to file. O'Sonis v. Bank of

Guam, 9 FSM R. 356, 360 & n.2 (App. 2000).

Upon a showing of excusable neglect or good cause, the court appealed from may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by Rule 4(a). Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

In the absence of a notice of appeal filed within 42 days after entry of judgment, a putative appellant has a maximum of 72 days after entry of judgment in which to file, for good cause, a motion to extend the time for the filing of the notice of appeal. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Upon a motion filed not later than 30 days after the expiration of the time prescribed by Appellate Rule 4(a) and with notice to the other parties, Rule 4(a)(5) allows the court appealed from to extend the time for filing a notice of appeal for excusable neglect or good cause. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Although Rule 4(a)(5) has no absolute deadline within which the court appealed from must rule on a motion to extend time to file a notice of appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. Therefore when there has been no ruling on a motion to extend for almost three years, it is best to treat the lack of a ruling as a denial. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time to file a notice of appeal, but when other factors are also present, the neglect may be excusable. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The alternative ground for a motion to extend time to appeal, "good cause" is a broader and more liberal standard than "excusable neglect," and under a plain reading of the rule, the good cause standard applies both to motions to extend filed after the initial appeal period has passed as well as those filed before. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

Under the unique combination of the state court's lack of a working copy machine, which delayed the entry of that court's opinion becoming known to the parties; the appellant's protracted unavailability for consultation with his counsel coupled with the short time left to appeal once he became available; the contemporaneous press of urgent cases; the appellant's counsel's diligent and good faith efforts; and the lack of prejudice to the opposing parties; both excusable neglect and good cause existed to extend time to appeal, and that it would have been an abuse of discretion to deny the motion requesting it. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

A notice of appeal from the Chuuk State Supreme Court trial division must be filed with the clerk of the trial division, not with the clerk of the appellate division, no later than 30 days after the entry of the judgment

appealed from, as extended by Rule 26(a). Konman v. Esa, 11 FSM R. 291, 295 & n.5 (Chk. S. Ct. Tr. 2002).

A notice of appeal in civil cases must be filed within 42 days of entry of the order or judgment appealed from, and any motion for an enlargement of time to file a notice of appeal must be filed no later than 30 days after the original 42-day period. Ramp v. Ramp, 12 FSM R. 228, 229 (Pon. 2003).

The good cause standard applies to a motion for the enlargement of time to file a notice of appeal when that notice is filed after the original 42 day period. The good cause standard is more lenient than the excusable neglect standard, to which the rule also makes reference. Ramp v. Ramp, 12 FSM R. 228, 229-30 (Pon. 2003).

When preparation of the notice of appeal would not have presented an insurmountable obstacle even given the distance involved and when there was no calendaring error and the notice for enlargement of time to file a notice of appeal was filed on the 72nd day after the entry of the order appealed from, which was the last day for doing so, while this presents a close question under a good cause standard, after careful consideration the court concludes that good cause for granting the enlargement of time to file the notice of appeal has not been stated. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

One factor to consider in ruling on a motion to extend time to file a notice of appeal is the length of the delay. When the length of delay was as long as it could possibly be – to the last day of the 30-day extended period and was under the defendant's counsel's reasonable control because it was caused by counsel's unwillingness (and maybe misperceived inability) to try to file anything while she was on vacation in the U.S. and when, given the number of possible steps counsel could have taken and the minimal amount of effort any of them would have required, counsel did not take any, it seems that the delay was purposeful. Goya v. Ramp, 13 FSM R. 100, 108-09 (App. 2005).

What may, in a close case, constitute good cause or excusable neglect for failure to file a notice of appeal until only one or two days after the 42-day period to appeal has expired, may no longer be good cause or excusable neglect 30 days later. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the potential impact on judicial proceedings of granting a motion to extend time to file a notice of appeal that was filed 30 days after the end of the 42-day appeal period, would be to change the 42-day time period to appeal to a 72-day time period where any reason given for not filing a notice of appeal before the 72nd day would suffice, the court will decline to grant the motion. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the factors of length of delay and its potential impact on judicial proceedings, reason for the delay and whether it was within the reasonable control of the movant, and possibly whether the movant acted in good faith, all weigh against a conclusion that excusable neglect was present and only the danger of prejudice factor does not clearly weigh against a movant who filed a motion to extend time to file a notice of appeal thirty days after the end of the 42-day appeal period, the trial court did not abuse its discretion when it concluded that the movant had not shown excusable neglect, and, given the number of available options, both before and after the end of the 42-day period, the trial court did not abuse its discretion when it concluded that the movant had not shown good cause. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A litigant in the Chuuk State Supreme Court trial division has thirty days after a judgment is entered in which to file a notice of appeal. Failing that, they have another thirty days in which to seek an enlargement of time in which to file a notice of appeal if they can show good cause or excusable neglect for the failure to file earlier. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Appellants have thirty days from the date of the order appealed from to file their notice of appeal. Chuuk Appellate Procedure Rule 4(a)(5) permits the trial division to extend the time to file a notice of appeal by another 30 days, or to ten days after the entry of the order granting the extension, if the motion to extend is filed before the second thirty days has expired. The appellate court cannot enlarge the time to file a notice of appeal. Mori v. Dobich, 15 FSM R. 12, 13 (Chk. S. Ct. App. 2007).

The FSM appellate rules allow an appellant to request an extension for filing a notice of appeal up to 30 days in addition to the 42-day period following judgment, creating a 72-day maximum period for perfecting an appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

The deadline for filing an appeal from the Chuuk State Supreme Court appellate division to the FSM Supreme Court appellate division is 42 days from entry of judgment, which time may be extended an additional 30 days upon a showing of excusable neglect or good cause. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although typically, an appellate judgment is entered at the same time the court enters its opinion, when the date judgment was entered was after the opinion, and when the appellants filed their notice within 42 days from entry of judgment, the notice of appeal was timely, and there was no need to seek an enlargement. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

An appeal in a civil case may be taken by the filing of a notice of appeal as provided in Rule 3 within 42 days after the date of the entry of the order appealed from, and the court appealed from may extend this 42-day period upon a motion, filed not later than 30 days after the expiration of the 42-day time period, showing excusable neglect or good cause. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507-08 (App. 2011).

Although Appellate Rule 4(a)(5) allows for the extension of 30 days to file the notice of appeal, based on excusable neglect, after the 42 days to appeal has expired, the FSM Supreme Court appellate division may not extend the time for filing of a notice of appeal because any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. Ruben v. Chuuk, 18 FSM R. 604, 607

(App. 2013).

The court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Either good cause or excusable neglect would suffice as a ground to extend time to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 637, 639 & n.2 (Chk. 2013).

The trial court can extend the time to file a notice of appeal only upon motion filed not later than 30 days after the expiration of the time to appeal prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

Rule 4(a)(5)'s central purpose is to make clear that a motion for extension of time must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

In order for a motion to extend the time to appeal to be timely when the time prescribed by Rule 4(a) to file a notice of appeal had expired on November 28, 2012, the appellant would have had to file the motion no later than December 28, 2012. Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

The requirement that motions for extension be filed within thirty days of the original deadline is mandatory and jurisdictional, and the failure to make a timely motion to file a notice of appeal out of time prohibits either the trial court or the appellate court from reviving the right to appeal. Ruben v. Chuuk, 18 FSM R. 637, 639-40 (Chk. 2013).

Because it is simply too late, a court is powerless to grant or even consider a party's March 25, 2013 motion to extend the time to appeal, even nunc pro tunc and the appeal cannot be revived when the court would have had jurisdiction to grant the motion only if the party had filed his motion by December 28, 2012, since Rule 4(a)(5) plainly permits the court to grant an extension only if the motion is filed within 30 days after the expiration of the original appeal period. Ruben v. Chuuk, 18 FSM R. 637, 640 (Chk. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

There are two requirements for a valid timely motion to extend the time to appeal. The motion must be filed in the court appealed from and it must be filed within 30 days of the expiration of the 42-day appeal period. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to file a notice of appeal. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Rule 4(a)(5)'s central purpose is to make clear that a motion for extension of time to file a notice of appeal must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants' cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants' attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4's time requirements or to grant a motion to extend time to appeal, a lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

Although Rule 4(b) has no absolute deadline within which the court appealed from must rule on a motion to extend the time to appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. The lack of a ruling on the motion to extend is considered a denial. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

When the July 23, 2010 Pohnpei Supreme Court appellate decision was not served on the appellant's counsel until eleven days after the decision was entered; when the time to appeal in a criminal case is ten days; when the failure to learn of the entry of judgment is a major reason for finding excusable neglect; when the Pohnpei Supreme Court appellate division has not ruled on the appellant's motion to extend time to appeal; and since the lack of a ruling on the motion to extend is considered a denial, the Pohnpei Supreme Court's denial of the motion to extend is reversed and the time for the movant to file his notice of appeal is extended 30 days to September 1, 2010. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The grant of a motion to extend the time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The time limit under the applicable rules is jurisdictional and the appellate court has no discretion to extend the time within which to file a notice of appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The time limit for filing a notice of appeal cannot be circumvented via an attempt to obtain an order nunc pro tunc, which runs counter to the underlying purpose of such a motion because the appellant does not seek the order to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date, but instead asks the court to antedate an "Amended Notice of Appeal" that was never served, let alone filed and thus, was not listed in the underlying matter's certificate of record. That would be improper since the existence of the "Amended Notice" only came to light when it was included in the appendix of the appellant's opening brief. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345-46 (App. 2016).

– Parties

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

An appellant should include in the caption only those persons or entities party to the appeal. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

Appellate Rule 43 generally allows substitution of parties by their successors in interest, either as a

result of a party's death, a public officer's replacement, or for other causes. Substitution for other causes is for such things as a party's incompetency, or the transfer of an interest, or the dissolution, acquisition, merger or similar change of a corporate party. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 625-26 (App. 2003).

The common-sense interpretation of the term "necessary" in Appellate Rule 43(b), which reads: "If substitution of a party in the Supreme Court appellate division is necessary for any reason other than death . . . ." is that it means that a party to the suit is unable to continue to litigate, not that an original party has voluntarily chosen to stop litigating, and the most natural reading of the Rule is that it only permits substitutions where a party is incapable of continuing the suit, such as where a party becomes incompetent or a transfer of interest in the company or property in the suit has occurred. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

When Pohnpei is not a successor in interest to the parties it seeks to substitute for on appeal or a transferee of any of their interests, but was at all times, a party adverse to their interests, and when the parties sought to be substituted for are not incapable of continuing suit, the motion to substitute parties must be denied. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

A party to a partial adjudication in a consolidated case is an appellee when an adverse party appeals that decision. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM R. 3, 8-9 (Chk. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

It might have been to a litigant's advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

When notice of appeal was filed by the then Chuuk Attorney General was ostensibly on behalf of all the defendants below, all of whom were jointly and severally liable for all or parts of the judgment, but the order in aid of judgment and writ of garnishment being appealed were directed solely against the state and state funds, the other defendants were not real appellants in interest since their only possible interest in the appeal was directly adverse to the state's. This is because if state funds satisfy the judgment then the other defendants' liability is extinguished without any payment by them. It was thus to their advantage that the writ of garnishment against the State was issued and honored. Consequently, the appeal was briefed and argued as if the state was the sole appellant. Chuuk v. Davis, 13 FSM R. 178, 181 n.1 (App. 2005).

When an heir appeared as an individual on his own behalf only, the remaining heirs did not appear in the case and therefore cannot be designated as appellees. Thus, the individual appears representing only his personal and individual claims to the land. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Appellate Procedure Rule 43, governing the substitution of parties in appeals, relies on Civil Procedure Rule 25. Civil Rule 25 contemplates that a court of competent jurisdiction would confirm or appoint an administrator or personal representative of the deceased's estate. Since the appellate division does not sit as a probate court of the first instance, the appellate court will not designate a representative of the estate or of the heirs. If a representative is later duly appointed, that representative will be listed as a party. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Under Appellate Rule 28(h), if a cross appeal is filed, the plaintiff in the court below will be deemed the appellant for the purpose of Rule 28 and 31, unless the parties otherwise agree or the court otherwise orders. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

In an appeal involving a cross-appeal, when the defendants below, who had filed the initial appeal, have filed an unopposed motion to be deemed the appellants, the court may designate the defendants at trial as the appellants in the appeal case for the purpose of complying with Appellate Rules 28, 30 and 31. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10 (App. 2007).

A deceased party's personal representative may be substituted as a party, on motion filed by the representative or by any party with the appellate division clerk in accordance Civil Rule 25, or, if the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate division may direct. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 122 (App. 2008).

If certain parties were named as defendants because they were the senior land commissioners in 1991 and 1999, the current senior land commissioner should have been substituted for them. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 n.2 (Chk. S. Ct. App. 2009).

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there is no appellee against whom the prevailing appellants may tax costs, the appellants' bill of costs must be denied in its entirety. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well

established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An appellant should include in the caption only those persons or entities that are a party to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

In an appeal from an attorney sanction order only the sanctioned attorney and the a party to whom the sanction is payable are parties to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

– Rehearing

Rehearing denied after review of appellant's petition. Loch v. FSM, 1 FSM R. 595, 595 (App. 1985).

Where the points of law and fact referred to in a petition for rehearing were not overlooked or misapprehended in the previous consideration of the appeal the petition will be denied. Carlos v. FSM, 4 FSM R. 32, 33 (App. 1989).

Where appellants request a rehearing on the grounds that it is no longer equitable that the judgment have prospective application, and neither the appellate order of dismissal nor the judgment in the state court had by their terms any prospective application the motion will be denied. Damarlane v. Pohnpei Transp. Auth. (I), 6 FSM R. 166, 167 (App. 1993).

After an appellate court has issued its opinion it may grant a petition for a rehearing if it has overlooked or misapprehended points of law or fact. Ordinarily, such petitions are summarily denied. Nena v. Kosrae (II), 6 FSM R. 437, 438 (App. 1994).

A motion for reconsideration of denial of rehearing will be considered as a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

A court has the power to enlarge the time to petition for rehearing and to modify an erroneous decision although the time for rehearing has expired, and sometimes may consider petitions for rehearing filed even after rehearing has been denied. Nena v. Kosrae (III), 6 FSM R. 564, 567-68 (App. 1994).

Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 482 (App. 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

When an appellate court has ruled on those issues necessary to decide the appeal before it and it has neither overlooked nor misapprehended any points of law or fact, it may summarily deny a petition for rehearing. Nahnken of Nett v. Pohnpei, 7 FSM R. 554, 554-55 (App. 1996).

Summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. Nahnken of Nett v. United States, 7 FSM R. 612, 613 (App. 1996).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide this appeal and has neither overlooked nor misapprehended any points of law or fact. Berman v. Santos, 7 FSM R. 658, 659 (App. 1996).

There is no basis on which to grant a motion for rehearing when the court has not overlooked or misapprehended points of law or fact and has not relied on cases not on point and has not deprived appellants of their right to appeal specific costs. Damarlane v. United States, 8 FSM R. 14, 18 (App. 1997).

A summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. In re Sanction of Berman, 8 FSM R. 22, 23 (App. 1997).

There is no basis to grant a petition for rehearing when it does not make any argument or raise any issue not previously considered, and the petitioners had ample time to address those arguments during the pendency of the action. Damarlane v. United States, 8 FSM R. 70, 71 (App. 1997).

The court may summarily deny a petition for rehearing and order the mandate issue immediately when it has carefully considered all of the appellants' arguments and has neither overlooked nor misapprehended any points of law or fact. Iriarte v. Etscheit, 8 FSM R. 263, 264 (App. 1998).

A petition for rehearing may be granted if the court has overlooked or misapprehended points of law or fact that may affect the outcome. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Panuelo v. Amayo, 12 FSM R. 475, 476 (App. 2004).

A court has the power to enlarge the time to petition for rehearing and to modify a decision although the time for rehearing has expired, and sometimes may consider later petitions for rehearing filed even after rehearing has been earlier denied. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing can be granted only if the court had overlooked or misapprehended a point of law or fact. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Ordinarily, the court would require an answer to the petition for rehearing, but when the matter on which rehearing is sought was also previously raised in motions no response or opposition to the motions was received, the court may chose not to request an answer to this petition. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing will be granted when it has been shown that the court has overlooked or misapprehended a point of law or fact, and when the court concludes that it has overlooked something it will grant the petition for rehearing solely to address that issue. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Regardless of what a post-appellate-judgment motion is called, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

Ordinarily, petitions for rehearing are summarily denied, but when the court considers that clarification may be helpful, reasons may be given. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

After an appellate court has issued its opinion, it may grant a motion for reconsideration if it has overlooked or misapprehended points of law or fact. Ordinarily such motions are summarily denied. A motion for reconsideration's summary denial is proper when the court has neither overlooked nor misapprehended any points of law or fact. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

When the points of law and fact referred to in a motion for reconsideration were not overlooked or misapprehended in the appeal's previous consideration, the motion for rehearing will be denied. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Since a party has fourteen days to petition for a rehearing, when an appellate opinion and judgment was entered on January 13, 2005, a rehearing petition should therefore be filed no later than January 27, 2005 or an enlargement of time requested. When the petition was filed February 2, 2005 and no enlargement of time was sought, the petition was untimely filed and could be denied on that ground alone. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Appellate courts do have the power to enlarge the time to petition for rehearing and to modify an erroneous decision even though the time for rehearing has expired. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Rehearing will be denied when even if the court misapprehended a certain fact, the result in the case would not change. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

When the appellant raises no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

When the appellants timely filed a petition for rehearing asserting that the panel overlooked or misapprehended points of law or fact, but by the next appellate session, one appellate panel member had become employed by the corporation representing the appellants and another had become the Chuuk Attorney General and was representing the state in a related appeal, in which some of the same issues were raised and whose office also represented the appellee in this appeal and then the original presiding justice passed away, it necessitated the appointment of a completely new appellate panel to consider the rehearing petition. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

Once the appellate court has granted a petition for rehearing, it may make a final disposition of the cause without reargument, or it may restore it to the calendar for reargument or resubmission. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

When a petition for a rehearing is based on the court's ruling in a trial *de novo*, the petition is analogous to a motion for a new trial under the Chuuk Civil Rules of Procedure. The only legal grounds for a new trial are when there is a manifest error of law or fact, or for newly discovered evidence. A motion for a new trial will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

A summary denial of a petition for rehearing is proper when the appellate court has carefully considered all of the appellant's arguments and has neither overlooked nor misapprehended any points of law or fact. Damarlane v. Pohnpei Legislature, 15 FSM R. 529, 529 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

A motion to reconsider filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition. Such a petition may be denied in its entirety as untimely filed. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008 without a motion to enlarge time to file the petition, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 623-24 (App. 2008).

By its express terms, Appellate Rule 40(a) only allows the time for a petition for rehearing to be enlarged by court order and Rule 26(c) is not a court order. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

The running of time within which a party may petition the court for a rehearing is not triggered by service of the opinion or judgment. It begins with the "entry of judgment." Thus, it, like the filing of a notice of appeal, a cross-appeal, or the appellant's opening brief, is not triggered by service, but by entry or filing. Appellate Rule 26(c) does not apply to petitions for rehearing and cannot extend the Rule 40(a) time limit for a petition for rehearing. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

A motion to reconsider filed after a panel has disposed of the appeal is considered to be a petition for rehearing. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing can be granted only if the court has overlooked or misapprehended a point of law or fact. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

When the petitioner has raised no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing may be denied as untimely when untimely filed and not accompanied by a request for enlargement of time. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When, after a careful consideration of a petition for rehearing, the appellate court has determined that it has neither overlooked nor misapprehended any points of law or fact, it may deny the petition. Berman v. Pohnpei Legislature, 17 FSM R. 452, 452 (App. 2011).

The appellate court will not, on a petition for rehearing, "correct" a factual finding when it made no findings of fact; when the fact objected to is a statement that was the facts as found by the trial court; and when that remained the facts on appeal as the events that occurred that led to the appellant's arrest even though the Pohnpei police station's booking sheet differs from those facts in some respects as to the charges for which she was booked. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

Rehearing will be denied when, even if the court had misapprehended a certain fact, the result in the case would not change. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or

fact, it may summarily deny a petition for rehearing. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When, by definition a default judgment is not a judgment obtained on the merits and makes no claim as to the merits of the case at all, the trial court could not have resolved the question of the civil rights nature of the underlying judgment that was a default judgment. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will summarily deny petitions for rehearing. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will deny a petition for rehearing. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 78 (App. 2011).

Ordinarily, petitions for rehearing are summarily denied, but, when clarification may be helpful, some reasons may be given. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When the petitioners' breach-of-contract liability is based solely on the breach of their contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When even if a petitioner had not signed any of the converted checks, that would not alter the trial court's finding that she had authorized another to sign her name and thus the result would not change and the petitioners would still be liable to the appellee. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

An appellate court must deny a petition for rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

Kosrae Appellate Rule 19 provides that a petition for rehearing may be filed within 14 days after entry of the Kosrae State Court's judgment or decision on an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants' petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

Regardless of what the party filing a paper seeking post-appellate-judgment relief calls the filing, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

The appellate court can grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Petitions for rehearing are usually summarily denied, but, when clarification may be helpful, some reasons may be given. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

When the Kosrae State Court's April 23, 2013 order made the denial of a rehearing petition before it

final, it made the Kosrae State Court's July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Since the appellate court must deny a rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change, the correction of a person's ancestry is not a ground to grant a petition for rehearing. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

While the court may grant a petition for rehearing if it has overlooked or misapprehended points of law or fact that may affect the outcome, petitions for rehearing are usually summarily denied but when clarification may be helpful, reasons may be given. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

A motion for reconsideration of a denial of a petition for rehearing must be considered a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Aritos v. Muller, 19 FSM R. 612, 614 (Chk. S. Ct. App. 2014).

A petition for rehearing must be filed within fourteen days of entry of the judgment, but the court may, by order, enlarge (or shorten) that time. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

A rehearing petition filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition, and may be denied in its entirety as untimely filed. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

An appellate court will grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Ordinarily, an appellate court will summarily deny a petition for rehearing, but, when clarification may be helpful, it may give some reasons. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide an appeal and has neither overlooked nor misapprehended any points of law or fact. Notwithstanding, when the court considers that clarification may be helpful, reasons may be given. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

– Standard – Civil Cases

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly where the party had ample opportunity to raise the issues in the trial court instead of presenting them for the first time on appeal. Paul v. Celestine, 4 FSM R. 205, 210 (App. 1990).

Where no motion has been made to amend the complaint at the trial level and the issue was not tried with the express or implied consent of the parties the general rule is that one cannot raise on appeal an

issue not presented in the trial court. Nena v. Kosrae (I), 6 FSM R. 251, 253-54 (App. 1993).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351-52 (App. 1994).

Where a trial court's decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court's decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM R. 554, 558 (Chk. S. Ct. App. 1994).

The standard of review for an appeal from the trial division's determination of an administrative agency appeal is whether the finding of the trial division was justified by substantial evidence of record. FSM v. Moroni, 6 FSM R. 575, 577 (App. 1994).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When Land Commission has received considerable credible and compelling evidence, the trial division's decision refusing to disturb the Land Commission's findings that there was substantial evidence to support the Land Commission's conclusion will not be overturned. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

An appellant may not complain of an error in his favor in the rendition of a judgment. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether

the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

When appellants' claim to tidelands has no customary basis and they never had any rights to it, and the only issues raised on appeal, whether the tidelands in question could be transferred without the consent of all the lineage's adult members and whether the trial court's decision allowed American citizens to become owners of Chuukese tidelands, are not material and are hypothetical as to the appellants, the trial court will be affirmed. William v. Muritok, 9 FSM R. 34, 35 (Chk. S. Ct. App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM R. 191, 193 (App. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court's summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

On an appeal from the Kosrae State Court, before considering the appeal's other merits, the appellate court must consider whether the Kosrae State Court should have granted the appellant's motion for a trial *de novo* (instead of conducting a judicial review), since, if he prevails on this point, the appellate court would not consider his other assignments of error. He would be starting afresh with a trial *de novo* before the

Kosrae State Court as if nothing had previously happened there. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error – error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

The Kosrae State Court must review the Land Court decision on the record, transcripts, and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court's decision was based upon substantial evidence or whether the decision was contrary to law, and if the court finds that the Land Court's decision was based upon substantial evidence and was not contrary to law, the Land Court's decision must be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When a careful review of the record, analysis, and consideration of the parties' arguments shows that the Land Court decision was based upon substantial evidence and was not contrary to law, the Kosrae Land Court decision will be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

If, on appeal, the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

When the Land Court's boundary decision was not based upon substantial evidence, the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 24 (Kos. S. Ct. Tr. 2004).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The general rule is that an issue not raised below will not be considered for the first time on appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

When an appellant failed to raise a state constitutional provision as an argument in its brief but mentioned it at oral argument, the court will not consider it. Chuuk v. Davis, 13 FSM R. 178, 184 n.4 (App. 2005).

When the appellant neither briefed nor argued that part of the trial court's order holding a statute unconstitutional as it applies to a judgment for violations of civil rights, the appellee correctly took the position that this issue was waived and did not address it, and, for these reasons, the court will not consider the issue. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision only on the record, transcripts, and exhibits received at the Land Court hearing. This review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the decision must be affirmed. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that it was contrary to law, the case must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339 (Kos. S. Ct. Tr. 2005).

Since the Kosrae Land Court procedures recognize the difficulty of receiving testimony and other evidence from claimants, parties, or witnesses who are not represented by counsel and pro se claimants are not well versed in the law and procedural rules and have difficulty understanding the specific procedural requirements and time limitations for the submission of evidence, and when the parties would have had the opportunity to submit the newly discovered evidence within a motion to amend, set aside or vacate the decision, the Kosrae State Court must conclude that the appellants' rights were violated when the Land Court summarily rejected the purported hand written statement without offering the pro se appellants an opportunity to offer foundation and authentication of the hand written statement and the appellees the opportunity to cross examine the same. Accordingly, the Kosrae Land Court's ownership decision was made contrary to law, and the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342 (Kos. S. Ct. Tr. 2005).

When based upon consideration of the record for both the Land Commission and the Land Court, and based upon the consideration of the position and knowledge inferred to the eldest son of a landowner who resided at and cultivates the land, the Land Court's ownership decision for the parcel was not based upon substantial evidence since it failed to consider the appellee eldest son's admission at the Land Commission proceedings, that the appellants' predecessor-in-interest owned some land at the place. Therefore, the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342-43 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Edmond v. Alik, 13 FSM R. 413, 415 (Kos. S. Ct. Tr. 2005).

When the Kosrae Land Court failed to provide statutory notice of the proceeding to an interested party, the determination of ownership must be vacated. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing and the court's review must determine whether the Land Court's decision was based upon substantial evidence and whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the

Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 430 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly when the party had ample opportunity to raise the issues in the trial court instead of presenting the issue for the first time on appeal. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When unclean hands was not pled as a defense to the plaintiff's claim, and it was not argued in the defendant's closing statement and the issue was not raised below, it was thus waived. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law, and if the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the Land Court decision must be affirmed. Kun v. Heirs of Abraham, 13 FSM R. 558, 559 (Kos. S. Ct. Tr. 2005).

Under the statutory provisions applicable to appeals made from a Kosrae Land Court decision, Kosrae State Court is required to apply the "substantial evidence rule" – if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, then the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court's decision contrary to law because the Land Court proceeding's presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

On appeals from a decision entered by the Kosrae Land Court, the Kosrae State Court is required to apply the "substantial evidence rule," and if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 100 (Kos. S. Ct. Tr. 2006).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006).

The Kosrae State Court is required to apply the "substantial evidence rule" to all Land Court decisions so that if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 288 (Kos. S. Ct. Tr. 2006).

When the Land Court findings and decision relied upon purported written wills which were not part of the record, the Land Court findings were not supported by substantial evidence and therefore the decision must be vacated and the matter remanded for re-hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

When some undisputed testimonies appearing in the transcript raise questions that the Land Court did not assess the evidence properly and when a careful review of the record and transcript finds that the appellants' argument have merit, the Land Court decision was not based upon substantial evidence. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289-90 (Kos. S. Ct. Tr. 2006).

Appellate courts do not make factual findings. Goya v. Ramp, 14 FSM R. 305, 307 n.1 (App. 2006).

When a trial court decision was based on an erroneous conclusion of law, the appellate court will reverse and remand the case to the trial court for further proceedings. Kileto v. Chuuk, 15 FSM R. 16, 17 (Chk. S. Ct. App. 2007).

A court need not, and indeed should not, engage in rendering advisory opinions. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

When the appellate court is unable to make any meaningful review of the trial court judgment because of the virtually complete absence of any findings of fact or conclusions of law and when a trial court has failed to make the findings of fact required by Rule 52(a), or if the findings are insufficient for a clear understanding and effective appellate review of the basis of the trial court's decision, the appellate court will vacate the judgment and remand the case to the trial court to make the required findings. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, because of the lack of findings of fact and conclusions of law by the trial court, the appellate court cannot determine whether the judgment was founded on an erroneous or a correct view of the law or whether the record could support a factual basis for the decision, the judgment must be vacated and the case remanded with orders that the trial court enter findings of fact and conclusions of law accordingly. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, in a March 2004 Order, the court held that the 120-day time limit applied and that the appeal had been filed within 120 days of service of the Land Commission's decision and therefore the Kosrae State Court had jurisdiction to hear the appeal, and when the appellants presented no new facts or legal argument that would merit reconsidering or changing that decision, it is the law of the case; which the appellants could have appealed after the September 2005 decision, but chose not to do so. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When the evidence presented at the Land Court hearing on remand is undisputed because the appellants chose not to appear; when the Land Court carefully considered the appellants' testimony from the records in the case to reach its decision; and when the Land Court's findings are adequately supported by the evidence, the court will not disturb those findings on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court for the lower court to make findings, the trial judge must make his findings of fact and separately state his conclusions of law, and, in doing so,

the trial judge may consult the transcripts and, if necessary, he may also take further evidence. Nakamura v. Chuuk, 15 FSM R. 146, 150-51 (Chk. S. Ct. App. 2007).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

When reviewing the Land Commission's actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When the order on remand required the Land Court to specifically consider a portion of testimony and the Land Court took additional testimony on remand and specifically analyzed the prior testimony and when the order on remand did not require the Land Court to change its findings or decision, only to specifically address this point of testimony, the appellant's argument that the Land Court decision must be overturned on this point must fail because the Land Court addressed the specific issue as required on remand. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

An issue raised for the first time on appeal is waived. The reason for this rule is that the lower court was not given an opportunity to consider the issue. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the record provided by the appellant on appeal does not provide the court with the basis for the trial court findings, the appellate court must therefore presume the findings are correct because by not providing an adequate record, the appellant cannot successfully challenge these findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The appellate court may affirm lower court judgments on grounds other than those employed by the lower court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

The standard of review for appeals from the Kosrae Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54

(Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the Land Court's first decision, assessed the evidence and made findings of fact supporting the appellants' ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees' ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When none of the trial court's rulings on legal issues, such as the existence of contracts and no liability for interest or attorney's fees, were appealed, they remain the law of each case on remand. Albert v. George, 15 FSM R. 574, 581 n.2 (App. 2008).

The Kosrae State Court is required to apply the "substantial evidence rule" to all appeals from Land Court decisions. If the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence, or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

When the Land Court relied on equity jurisdiction instead of substantial evidence as required by statutory authority and precedent, its decision was contrary to law and the matter will therefore be remanded to it with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The FSM Supreme Court may affirm judgments of lower courts for reasons other than those employed by the lower court. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Since, by statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs, a request for a *de novo* proceeding will be denied and no evidence or testimony will be considered except the official record, transcripts, and exhibits received at the Land Court hearing. The court applies the "substantial evidence rule" when reviewing Land Court decisions. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

If the State Court finds that the Land Court decision was not based upon substantial evidence or that the decision was contrary to law, it must remand the case with instructions and guidance for the Land Court to rehear the matter in its entirety or in such portions as may be appropriate. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

In reviewing the Land Court's procedure and decision, the State Court considers whether the Land Court: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. The question is whether the Land Court deprived any party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. The State Court cannot substitute its judgment for the lower court's well-founded findings. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court's 1997 instructions to Land Commission about Yekula can only be considered further guidance (beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

The appellate court need not address again a duplicative argument that it addressed earlier in its opinion. Simina v. Kimeuo, 16 FSM R. 616, 622-23 (App. 2009).

The FSM Supreme Court's jurisdiction and ability to consider facts and arguments are dictated by Constitution, statute and rule, and the court will not ignore its constitutional duty by permitting the appellants to raise at the appeal's late date a different theory of the case and factual assertions not raised at the trial level. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

Harmless error is not a ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant's, instead of the appellee's, favor. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

The appellate court will not substitute its judgment for that of the trial court when the trial court made findings of such essential facts as provide a basis for the decision. Peter v. Jessy, 17 FSM R. 163, 172 (Chk. S. Ct. App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

When only three of the seven issues raised by the appellant are ripe for appeal because the trial court made no determination on the other four issues and explicitly did not consider any argument on those issues and made no ruling on those issues below, the appellate court will not address those four. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellate court may first address the ground that the trial judge ought to have recused himself because if the appellant were to prevail on it, the case would be remanded for a new trial and no other issue would need to be addressed. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

Generally, an appellate court will not consider an issue raised for the first time on appeal because when a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

The appellate court will not consider a recusal issue when, by her own account, the appellant knew of the factual basis for a recusal motion long before trial but she delayed raising the issue in the case until she filed her appellate brief. Berman v. Pohnpei, 17 FSM R. 360, 367-68 (App. 2011).

While the trial court incorrectly used the Pohnpei criminal statutes to decide tort elements, this was a harmless error since, if the trial court had correctly applied Pohnpei tort law, the plaintiff still would not have prevailed on her assault and battery claims. A harmless error is not a ground to grant a new trial or to vacate, modify, or otherwise disturb a judgment or order. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

When the plaintiff did not ask the trial court to allow it to use the parcel for an equivalent time period and when this issue was not raised at the trial level, it is not properly before the appellate court, but, given that the case will be remanded for further hearings on damages, this is an issue of damages, to be resolved on remand to the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

Even when an appellee has not moved to dismiss the appeal for lack of jurisdiction over a non-final judgment, the appellate court will consider the question because, generally, only final judgments or orders can be appealed. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011).

When the parties never briefed the issue of takings in the trial court, that issue is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the possible fourth type of civil rights violations – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court and was not considered by the court on appeal; when the Barrett appellate decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution; and when the trial court appealed from did not state that the plaintiff had a property right in the state court judgment, the question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the trial court observed that the question of ejectment was still open and when there is no evidence in the record that the parties have made further motions or filed further briefs on that question, that question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (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).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

A factual finding and a legal conclusion should be vacated on due process grounds when they were arrived at without the benefit of due process of law. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

When the State Court either applied the wrong (preponderance of the evidence) standard or incorrectly applied the substantial-evidence rule and when the State Court made a clear error of law in its adverse possession ruling and it is difficult to determine to what extent that error tainted the State Court's review of the Land Court decision, the State Court's decision must be vacated and the matter remanded for further proceedings in the State Court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

When the appellate court ruled that an appellee has the better argument, it did not create a burden of proof for either side, or shift any burden. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 121 (App. 2011).

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. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

When the decision appealed from was the result of a trial de novo on the merits, the usual standards of review of a trial court judgment apply. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court's factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

When an appellant listed an issue in his brief but did not include any argument about it in his brief and did not mention it during oral argument, the issue must be considered waived. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The standard for appellate review of decisions involving comity can be either the abuse of discretion standard or de novo review depending on the nature of the comity involved. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence, and to resolve factual disputes. If the findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

When the appellant presented four issues in his brief, but addressed and labeled only two, the court will address only the two issues actually expanded on by the appellant. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Conclusions of law are reviewed de novo, and, since a trial court's findings are presumptively correct, any challenged findings of fact are reviewed using the clearly erroneous standard. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

The appellate court reviews questions of law de novo, but will overturn a lower court's factual findings only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after considering the entire record, the court is left with a definite and firm conviction that a mistake has been made. Aritos v. Muller, 19 FSM R. 533, 536 (Chk. S. Ct. App. 2014).

Generally, the rule is that an issue not raised below will not be considered for the first time on appeal. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Caselaw mirrors the statutory directive that the Kosrae State Court, when reviewing Land Court decisions, must focus on whether the lower court decision was predicated on substantial evidence and not contrary to law. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review for Kosrae Land Court decisions, by not only the Kosrae State Court but also the FSM Supreme Court, is whether the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the Land Court decision must be affirmed even if the evidence would not amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court, when scrutinizing a Kosrae State Court decision that reviewed a Land Court decision, is whether the Kosrae State Court abused its discretion by failing to properly apply its standard of review. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 n.2 (App. 2016).

An appellate court cannot ignore applicable, controlling law, even if the parties have. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418-19 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

When neither the doctrine of *res judicata* nor equitable estoppel was addressed by trial court, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

On appellate review, the Kosrae State Court must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

When reviewing a Land Court decision, the Kosrae State Court must determine if the record contained evidence supporting the Land Court decision that was more than a scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision, even if the evidence would not in the State Court's view, amount to a preponderance of the evidence, but would be somewhat less and even if the State Court would have decided it differently. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

An appellate court may affirm the trial court's decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Tilfas v. Kosrae, 21 FSM R.

81, 92 (App. 2016).

An appellate court need not address an appellant's duplicative arguments. Tilfas v. Kosrae, 21 FSM R. 81, 94 (App. 2016).

– Standard – Civil Cases – Abuse of Discretion

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

The standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445 (App. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney's subjective intent. Damarlane v. United States, 8 FSM R. 45, 58 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The standard for review of the exercise of discretion by the trial justice is the abuse of discretion standard because the trial judge has the opportunity to observe the demeanor and candor of the witnesses and is in the best position to make the determination on issues of fact. In re Ori, 8 FSM R. 593, 594 (Chk. S. Ct. App. 1998).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 137 (App. 2001).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly

erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court's determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A judge abuses his discretion when his action violates a litigant's right to due process because such action is clearly unreasonable. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The issue of whether a trial court erred in issuing an injunction is reviewed using an abuse of discretion standard. FSM v. Udot Municipality, 12 FSM R. 29, 52 (App. 2003).

The FSM Supreme Court's standard of review of a Kosrae State Court's judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A trial court's Appellate Rule 5(a) certification is subject to an abuse of discretion standard. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

A trial court's imposition of discovery sanctions is reviewed on an abuse of discretion standard. Since fashioning remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion, the appellate court will not disturb them absent a showing that the trial court's action unfairly resulted in substantial hardship and prejudice to a party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 245-46 (App. 2006).

Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

The question before an appellate court is not whether the appellate court would have imposed the sanction the trial court did, but whether the trial court abused it discretion in doing so. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

The question on appeal is not whether it was an abuse of the trial court's discretion to quash a deposition subpoena for a party, but whether the trial court abused its discretion in awarding expenses and attorney's fees as sanctions for quashing the subpoena. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Whether a trial court erred in granting leave to amend a complaint is usually reviewed on an abuse of discretion standard, but when the decision is based on a legal conclusion, the review is de novo. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When the trial court decided to grant leave to amend based on its determination that the interests of

justice outweighed any prejudice that might accrue to the appellants if the amendment were allowed, this was not a legal conclusion by the trial court, but rather an exercise of its discretion and therefore the trial court's decision will be reviewed on an abuse of discretion standard. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

A court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Thus, failures to rule on motions were an abuse of the trial justice's discretion and led to further reversible error in the trial justice's rulings. Ruben v. Hartman, 15 FSM R. 100, 109 (Chk. S. Ct. App. 2007).

When the trial judge made no rulings on motions to dismiss and for relief from judgment or order and so failed to exercise whatever discretion he may have had to rule on them, he abused his discretion since a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 64 (App. 2008).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife's uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

For an appellate court to find that a trial court's factual findings were in error is an abuse of discretion standard of review. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. Simina v. Kimeuo, 16 FSM R. 616, 619-20 (App. 2009).

Relief from a judgment under Rule 60 is addressed to the court's discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly

erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657-58 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants' liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

The abuse of discretion standard sets a high bar for reversal. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

The standard of review appropriate in allegations of abuse of discretion is that an abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence upon which the court could rationally have based its decision. This standard implies that the reviewing court must also review the decision below for erroneous conclusions of law and clearly erroneous findings of fact. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

The standard of review appropriate for denials of writs of garnishment is the abuse of discretion

standard. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence upon which the court could have rationally based its decision. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

When a trial court has the power to fashion an alternative remedy, but a party neither files a request for such alternative nor urges it at a hearing for the remedy the party actually requested and when the trial court has not foreclosed the possibility of the alternative remedy, the trial court has not abused its discretion by not fashioning its own relief. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

A lower court's denial of an extension of time is reviewed under the abuse of discretion standard. A court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision, and such abuses must be unusual and exceptional. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

In determining if a lower court abused its discretion, the appellate court cannot substitute its own judgment for that of the lower court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627-28 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants' enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court, under Kosrae Appellate Rule 9(b), does not have such unbridled discretion as to deny an enlargement motion when if good cause is shown because if it did, its actions would only be arbitrary or capricious and thus an abuse of discretion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court's discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants' opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney's subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Since the standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion, the standard of review for a relief from an entry of default logically should also be abuse of discretion. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The appellate court reviews the issue of whether a trial court erred in issuing, modifying, or denying an injunction by using the abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

A court may abuse its discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

Since the grant of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court will review the trial court's denial of consolidation on an abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court's discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision about relief from judgment should be reviewed only upon a showing that the trial judge's ruling manifested an abuse of discretion. Such abuses must be

unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An appellate court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether to impose Rule 11 sanctions is subject to the trial court's discretion. As such, an abuse of discretion standard is utilized to review lower court decisions that address the propriety of these sanctions. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

In addition to appeals of Rule 11 sanction orders being reviewed under an abuse of discretion standard, an objective standard is employed, as opposed to assessing an attorney's subjective intent. Since the underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings, an appellate court will objectively scrutinize the lower court's analysis about the merits of imposing Rule 11 sanctions. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26-27 (App. 2016).

The FSM Supreme Court's standard of review when scrutinizing a Kosrae State Court decision, which in turn, reviewed a Land Court decision, is whether the former abused its discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

A Rule 41(b) dismissal is generally reviewed for abuse of discretion. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Waguk v. Waguk, 21 FSM R. 60, 65-66 (App. 2016).

The complaining party has the burden of showing that the trial court abused its discretion. Such abuse will not be presumed. It will be presumed that the discretion was proper. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its

decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

A lower court's decision to dismiss a case should be scrutinized, with an eye toward determining whether it is an abuse of discretion on the presiding judge's part. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence, on which the court rationally could have based its decision. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

– Standard – Civil Cases – Admission of Evidence

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

When the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court's finding of fact, which an appellate court should not set aside where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When the full and complete record of prior Land Commission proceedings was admitted into evidence at a Land Court hearing and that record contained documentary and testimonial evidence of an oral will, it was proper for the Land Court to consider and rely upon the Land Commission record, including the evidence pertaining to the oral will. Accordingly, the Land Court's consideration of the Land Commission record, including evidence of the oral will, was not contrary to law. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627-28 (Kos. S. Ct. Tr. 2004).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn't require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir's requirements and their own expert witness presented evidence that the trial court found credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will not, therefore, entertain a new theory regarding achemwir's requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A trial court decision issuing, modifying, or denying an injunction is reviewed using an abuse of discretion standard. A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Berman v. Pohnpei, 19 FSM R. 111, 114-15 (App. 2013).

The appellate court reviews whether a trial court erred in issuing, modifying, or denying an injunction under an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court reviews the trial court's denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

– Standard – Civil Cases – De Novo

Issues of law are reviewed *de novo* on appeal. Nanpei v. Kihara, 7 FSM R. 319, 323-24 (App. 1995).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

The appellate court applies de novo the same standard in reviewing a trial court's grant of summary judgment as that used by a trial court under Rule 56. Nahnken of Nett v. United States, 7 FSM R. 581, 585-86 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff's claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Motions the trial court decided as a matter of law are issues of law and are reviewed de novo. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law distinct from issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The standard of review of a summary judgment on appeal is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 410-11 (App. 2000).

Whether a trial court erred in dismissing a complaint for failure to state a claim is an issue of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430 (App. 2000).

When the question presented is one of law, it is reviewed on a de novo basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

Issues of law are reviewed de novo on appeal. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

Issues of law are reviewed *de novo*. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

An appellate court may affirm the trial court's summary judgment on a different theory when the record

contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM R. 139, 150 n.3 (App. 2002).

Questions of law are reviewed *de novo*. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

In reviewing the trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 358 (App. 2003).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The FSM Supreme Court's standard of review of a Kosrae State Court's judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

Issues of law are reviewed de novo on appeal. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Sigrah v. Kosrae, 12 FSM R. 320, 324 (App. 2004).

A contention that the trial court erred as a matter of law when it afforded relief on an unjust enrichment claim is reviewed de novo. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

Those issues which are questions of law are reviewed *de novo*. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

Whether a financial privilege with respect to non-party borrower records should be recognized; whether a loan agreement's terms created intended third-party beneficiaries; and whether the trial court could award attorney's fees as part of the third-party beneficiary claim are questions of law, which an appellate court reviews de novo. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

On appeal from a summary judgment based dismissal, the standard of review is a *de novo* determination that there was no genuine issue of material fact and that the party who prevailed below was entitled to judgment as a matter of law. In other words, the reviewing court applies the same standard that the trial court employed when it determined whether the moving party was entitled to summary judgment. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

Issues of law are reviewed de novo on appeal. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

All issues of law are reviewed de novo on appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 396 (App. 2007).

Whether a party was a bona fide purchaser without notice and whether the consent of all adult lineage members is needed for the sale of lineage land are issues of law, which the appellate court reviews *de novo*. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Trial court judgments issued without a trial are summary judgments to which the trial court should have applied the summary judgment standard to its rulings. The appellate court's standard of review of those rulings thus must be the one used to review summary judgments. It must apply *de novo* the same standard that a trial court uses in its determination of a summary judgment motion, which is that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

Due process issues are generally questions of law. Questions of law are reviewed *de novo* by the appellate court. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). It views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 590 (App. 2008).

On appeal, issues which are questions of law are reviewed de novo. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58, 59, 61, 62 (App. 2008).

In reviewing an issue de novo, an appellate court applies the same standard in reviewing the trial court's grant of summary judgment as that initially employed by the trial court itself, *i.e.*, whether there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

It is within a single justice's power to, upon the justice's own motion and with adequate notice, dismiss an appeal for an appellant's failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

A full panel's review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129 (App. 2008).

Whether judgment was improperly entered in the appellees' favor when the appellants contend that they did not appear and present their case at trial because they had not received notice of trial is an issue of law which is reviewed de novo. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions *de novo*, and motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews *de novo*. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Issues of law are reviewed de novo on appeal. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

Issues of law are reviewed de novo on appeal. Simina v. Kimeuo, 16 FSM R. 616, 619 (App. 2009).

Issues of law are reviewed *de novo* on appeal. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court's legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

On appeal, issues of law are reviewed *de novo*. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

Contentions involving due process issues are generally questions of law, and questions of law are

reviewed *de novo*. Berman v. Pohnpei, 17 FSM R. 360, 369 (App. 2011).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. Berman v. Pohnpei, 17 FSM R. 360, 370 n.3 (App. 2011).

Although, when denying the plaintiff's due process claims, the trial court may have been imprecise when it failed to specify that the one claim Pohnpei was liable for was also a due process claim and it was on all of the other due process claims that the trial court ruled in Pohnpei's favor, any imprecision in, or confusion caused by, the trial court language would not entitle the appellant to any relief. Berman v. Pohnpei, 17 FSM R. 360, 371-72 (App. 2011).

Whether a litigant is entitled to an attorney's fee award is a question of law, which an appellate court reviews de novo. Berman v. Pohnpei, 17 FSM R. 360, 375 (App. 2011).

Conclusions of law will be reviewed de novo. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court applies the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434-35 (App. 2011).

Statutory interpretation is a matter of law and issues of law are reviewed de novo on appeal. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Conclusions of law will be reviewed de novo. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Conclusions of law will be reviewed de novo. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

Since due process issues are questions of law that are reviewed de novo, and since, if the appellants were to prevail on the due process claims, the appellate court would vacate the decisions below without further considering the merits and remand the matter for new proceedings, the appellate court will analyze the due process issues first. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

Trial court decisions concerning questions of law are reviewed de novo. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court will apply the same standard in reviewing a trial court's grant of summary judgment as that applied by the trial court. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

Issues of law are reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A trial court's contract interpretation will reviewed de novo because the interpretation of contract provisions is a matter of law determined by the court. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A statutory provision's interpretation and application is an issue of law reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

Questions of law are reviewed *de novo*. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Whether the damages sought in a default judgment constitute a sum certain is a matter of law which is reviewed de novo. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Civil Procedure Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Any issues of law are reviewed de novo. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

In reviewing a grant or denial of summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion, which the court applies de novo to determine whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Smith v. Nimea, 19 FSM R. 163, 168-69 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court's decision denying an employee's claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

Since Kosrae State Court orders in aid of judgment and the accrual of post-judgment interest are governed by Kosrae statutes and since an issue on a statute's application is an issue of law, the review will be de novo. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

If, whether attorney's fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court's discretion to award attorney's fees, the grant or denial of an attorney's fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Questions of law are reviewed de novo. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300 (App. 2014).

Review of conclusions of law is de novo. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

The appellate court applies the same standard in reviewing a trial court's grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to

the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Jurisdictional issues are mainly questions of law. Questions of law are reviewed de novo. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

When the question presented is one of law, it is reviewed on a de novo basis. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 429 (App. 2014).

A grant or denial of summary judgment is reviewed using the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion. Thus, the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Matters of law are reviewed de novo. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Since the interpretation of contract provisions is a matter of law to be determined by the court, the appellate review is de novo. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

Issues of law are reviewed de novo on appeal. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 21 (App. 2015).

An appellate court applies the same standard in reviewing a trial court's grant of summary judgment as that initially employed by the trial court under Rule 56(c). Thus, the standard of appellate review of a summary judgment is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

In reviewing a trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under FSM Civil Rule 56. Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Matters of law are reviewed de novo. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

An appellate court reviews issues of law de novo. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

An appellate court reviews de novo any matters of law. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Issues of law are reviewed de novo. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties'

standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

When the case on appeal is subject to *de novo* review, the reviewing court is empowered to affirm a lower court's decision on grounds other than those utilized by the latter. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

Issues of law are reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Issues of law are reviewed de novo on appeal. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Issues of law are reviewed de novo on appeal. Esau v. Penrose, 21 FSM R. 75, 77 (App. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Issues of law are reviewed de novo on appeal. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

– Standard – Civil Cases – Factual Findings

The trial court finding of recklessness is a finding of fact which may not be set aside on appeal unless it is clearly erroneous. FSM Civ. R. 52(a). Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

The standard of review on appeal on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 165 (App. 1987).

The standard of review on a question of the sufficiency of the evidence is whether it is clearly erroneous. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge but in reviewing the findings it may examine all of the evidence in the record in determining whether the trial court's factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 59 (App. 1993).

Clear error in key factual findings merits setting aside conclusions of law and is one factor indicating incorrect use of discretion. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Where the trial court found no negligence and the appeal court upon review of the record does not find the trial court's factual findings to be clearly erroneous the trial court's dismissal of the negligence claim will be affirmed. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

Where the trial court's finding that damages were not proven at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wito Clan v. United Church of Christ, 6 FSM R. 291, 292 (App. 1993).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to the appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

An appellate court should not set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. The trial court, unlike the appellate court, had the opportunity to view the witnesses and the manner of their testimony. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Because findings of fact shall not be set aside unless clearly erroneous an appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Cheni v. Ngusun, 6 FSM R. 544, 546 (Chk. S. Ct. App. 1994).

An appellate court may set aside a trial court's factual findings as clearly erroneous when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

A trial court's findings of fact shall not be set aside unless clearly erroneous, and the appellate court shall give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

A trial court's factual findings are presumed correct. An appellate court must be especially circumspect in reviewing a trial court for clear error when there was conflicting evidence presented on issues of fact because the trial court had the opportunity to observe the witnesses' demeanor while it has not. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Emilios v. Setile, 6 FSM R. 558, 561 (Chk. S. Ct. App. 1994).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Whether a debtor has the ability to comply with an order in aid of judgment is a finding of fact, which will

be set aside on appeal only if it is clearly erroneous. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, but it should not set aside a finding of fact where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The Chuuk State Supreme Court appellate division will affirm a trial court's findings of fact unless the findings are clearly erroneous. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

The appropriate standard of review when reviewing a trial court's finding on sufficiency of the evidence is whether the trial court's finding is clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Damarlane v. United States, 8 FSM R. 45, 53 (App. 1997).

The appellate division will not set aside findings of fact unless clearly erroneous, and due regard will be given to the trial court's opportunity to judge the credibility of the witnesses. Marcus v. Suka, 8 FSM R. 300a, 300b (Chk. S. Ct. App. 1998).

Due regard must be given to the opportunity of the trial judge to weigh the witnesses' credibility. During the testimony, a trial judge may take into account the witness's appearance, manner, and demeanor while testifying, his apparent frankness and intelligence, his capacity of consecutive narration of acts and events, the probability or improbability of the story related by him, the advantages he appears to have had for gaining accurate or retentiveness of his memory as well as the lapse of time affecting it, and even the intonation of his voice and his positiveness or uncertainty in testifying. It may affect the credibility of a witness that he is expressing his belief as to a particular matter, rather than his knowledge, or that he testifies positively rather than negatively; or that he has made prior statements which are inconsistent with his trial testimony. Marcus v. Suka, 8 FSM R. 300a, 300b-0c (Chk. S. Ct. App. 1998).

To reverse the trial division's findings of fact, the appellate division must find that 1) the trial division's findings are not supported by substantial evidence; 2) there was an erroneous conception by the trial division of the applicable law; and 3) the appellate division has a definite and firm conviction that a mistake has been made. Marcus v. Suka, 8 FSM R. 300a, 300c (Chk. S. Ct. App. 1998).

Findings of fact will not be set aside unless clearly erroneous, and due regard shall be given to the trial court's opportunity to judge the witnesses' credibility. The appellate court starts its review of a trial court's factual findings by presuming the findings are correct which means that the appellant has the burden to clearly demonstrate error in the trial court's findings. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The trial court will be affirmed when the appellant, challenging the weight given a witness's uncorroborated testimony, has failed to furnish the appellate court with a means to review all the evidence presented to the trial justice and nothing is found in a review of the record and briefs to indicate that the trial

justice's factual findings were clearly erroneous. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The standard of review of a trial court's adoption of a special master's report is whether the adoption of the special master's findings was clearly erroneous. This same standard of review applies to a special master's report. Thus, if a special master's report is clearly erroneous, then it, like a trial court opinion, may be set aside. Thomson v. George, 8 FSM R. 517, 521 (App. 1998).

In determining whether a factual finding is clearly erroneous, an appellate court cannot substitute its judgment for that of the fact finder. The trial court's factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Thomson v. George, 8 FSM R. 517, 522 (App. 1998).

A review of the trial court's factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Hartman v. Chuuk, 9 FSM R. 28, 30 (Chk. S. Ct. App. 1999).

When the trial court has carefully observed the demeanor of all the witnesses, the trial court will not be put in error unless its findings of fact are clearly erroneous. William v. Muritok, 9 FSM R. 34, 36 (Chk. S. Ct. App. 1999).

A review of the trial court's factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The appellate court does not have the same opportunity to view the witnesses and as a result, it must be especially circumspect in reviewing a trial court for clear error. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

When the appellate court finds nothing in the record on appeal that contradicts the master's findings or the High Court judgment previously rendered on the issues of ownership of the land in question and the state trial court judgment appealed from is based solely on the previous High Court decision, the trial court will be affirmed. Bualuay v. Rano, 9 FSM R. 39, 40 (Chk. S. Ct. App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's finding is clearly erroneous. When the trial court's finding that damages were not proved at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A trial court's factual findings adequately supported by substantial evidence in the record cannot be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly

erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law distinct from issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

When the trial judge believed one witness's testimony and not another's, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion, since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony, and the appellate court did not have that opportunity. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

There are not reasons to find clearly erroneous the trial court's finding that the defendant continued to utilize her IDD service after she requested termination when the trial court had before it evidence that the calls reflected the same pattern as existed throughout the billing period. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court should not set aside a finding of fact when there is credible evidence in the record to support that finding, in part because the trial court, unlike the appellate court, had the opportunity to view the witnesses' demeanor and the manner of their testimony. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

If, upon reviewing all the evidence in the record, an appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court cannot substitute its judgment for that of the trial court where the court made findings of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When reviewing a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a

mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The appellate court starts its review of a trial court's factual findings by presuming the findings are correct. This means that an appellant has the burden to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden is to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The trial court will be affirmed when the appellants have not overcome the presumption that a trial court's findings are correct, and have not met their heavy burden of showing that the trial court's findings were clearly erroneous and when there was substantial evidence in the record to support the trial court's decision that the island belonged to the appellees and a review of the entire record does not leave the appellate court with the definite and firm feeling that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. The reviewing court will set aside a finding of fact only where there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the trial court did not make any finding as to what the prior custom and practice had been, the

purpose of a remand to the trial division is for it to determine what the prior customary and traditional practice was. The appellate court can make no finding as to what the customary and traditional practice has been concerning Fayu because that finding must first be made by the trial court. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

It is not the appellate court's place or function to make factual findings in the first instance. An appellate court may review a trial court's findings for clear error, but it cannot use the trial court record to supplant the trial court and act as fact finder. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

If, upon viewing all evidence in the record, the appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

The fact that the trial court based its findings of fact in part on a witness's testimony, when he was not subject to cross examination, is not clear error if other credible evidence supports the same findings of fact. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When, viewing the evidence in the light most favorable to the appellee, the appellate court does not have a definite or firm conviction that any mistake was made by the trial court, it cannot find that the trial court's decision was clearly erroneous. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

It is primarily the task of the Land Court, and not the reviewing court, to assess the credibility of the witnesses, consider the admissibility of evidence and to resolve factual disputes. This is because it is the Land Court who is present during the testimony and offer of evidence. On appeal, the reviewing court should not substitute its judgment for well-founded findings of the lower court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

A review of the trial court's factual findings is done under the "clearly erroneous" standard and the appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome for the reason that the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

Any of three conditions are required for the court to find reversible error when the trial court findings are alleged to be clearly erroneous: first, if the trial court findings were not supported by substantial evidence in the record; second, the trial court's factual finding was the result of an erroneous conception of the applicable law; and third, if the appellate court is of firm conviction that a mistake has been made. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

For an appellate court to find that a trial court's finding is in error it must determine that the finding was clearly erroneous. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. The trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate

court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court's well-founded findings. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

When, after careful review of the record, the Kosrae State Court concludes that the factual disputes before the Land Court were properly resolved and the Land Court's finding that the conditions pertaining to continued ownership of land had been fulfilled was supported by substantial evidence, it will not substitute its judgment for the Land Court's well-founded findings, and when the Land Court's findings and conclusions in awarding the appellee ownership were supported by substantial evidence and are not contrary to law, the Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court's factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision were based upon substantial evidence, the court recognizes that it is primarily the task of the Land Court to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

When a decedent's will did not identify or list the parcel as one of the parcels belonging to the decedent; when a brother and a sister of the decedent both testified that the parcel was not owned by the decedent; and when it is the Land Court's duty to assess the witnesses' credibility, the admissibility of evidence, to resolve factual disputes, and to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence which was made by a person, now deceased, and therefore not subject to cross-examination, the Land Court properly resolved the factual disputes, whose findings were supported by substantial evidence. The reviewing court will not substitute its judgment for the Land Court's well-founded findings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 482 (Kos. S. Ct. Tr. 2005).

On a challenge to the sufficiency of the evidence in support of the trial court's findings of fact – the standard of review applicable to the trial court's findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the reviewing court, after considering the evidence in the light most favorable to the appellee, is left with the firm and definite conviction that a mistake has been committed. The trial court's findings are presumptively correct. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

For those issues challenging a trial court's factual findings the standard of review is whether those findings are clearly erroneous, and in determining whether a factual finding is clearly erroneous, the appellate court must view the evidence in the light most favorable to the appellee. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and

construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

When the trial court's finding that the trochus business was generally not profitable was not clearly erroneous, that finding must stand. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25 (App. 2006).

Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court's well-founded findings. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 524 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Findings and decisions of the Land Court will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

The Kosrae State Court must uphold Land Commission findings as issued by the Land Court if they are supported by substantial evidence. This does not mean that the evidence must be uncontroverted or undisputed. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

The appellate court reviews factual findings on a clearly erroneous standard, and questions of law *de novo*. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When the trial court's findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand because it is not the appellate court's place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility, and the appellate court did not. Mathias v. Engichy, 15 FSM R. 90, 96-97 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court because the lower court's findings were inadequate, the trial judge must make his findings of fact and separately state his conclusions of law used to arrive at his decision, and, to assist, the trial judge may consult the transcripts, the filed proposed findings of fact and conclusions of law, and, if necessary, he may also take further evidence. Mathias v. Engichy, 15 FSM R. 90, 97 (Chk. S. Ct. App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

When the trial court's findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand since it is not the appellate court's place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate since the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility, and the appellate court has not. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

The clearly erroneous standard is met either when the factual finding was not supported by substantial

evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

The Land Court's factual findings and decision are overturned on appeal if they are not supported by substantial evidence. In considering whether the Land Court's findings and decision was based upon substantial evidence, the appellate court should not substitute its judgment for the lower court's well-founded findings since it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence and to resolve factual disputes. The appellate court views evidence in the light most favorable to the appellee, looking for a definite or firm conviction that a mistake was made and therefore that the lower court's decision was clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 297 (Kos. S. Ct. Tr. 2007).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to an appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the evidence cited by the appellants to support their new argument is that the hand drawn map from the earlier case does not look enough like the maps in the current case, their conjecture that they may not be the same does not leave the court with a definite and firm conviction that a mistake has been made. When construing the evidence in a light favorable to the appellees; this conjecture is not enough to demonstrate a clear error. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

The Land Court is responsible for assessing the credibility of the witnesses, the admissibility of evidence and resolving factual disputes. If its findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

A trial court finding of fact is clearly erroneous when, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with the definite and firm conviction that a mistake has been committed. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

When the ledger sheets, from which the trial court derived each judgment amount, were never authenticated by affidavit or by testimony and neither were their accuracy vouched for by affidavit, or testimony, or other evidence; when, even though the defendants may have agreed at the hearing to the ledger sheets' admissibility (i.e., authenticity), it is seriously doubtful that they could have agreed to the ledger sheets' accuracy since one defendant had not seen the business ledger and the other specifically questioned the accuracy of certain charges; and when, if they had been stipulating to the ledgers' accuracy, that would have been a waiver of any rights they had left since no other issues of fact or right to trial would have remained, the appellate court can only conclude that the defendants, when they left it up to the court "without waiving any rights" did not intend to, and did not, waive their rights to trial on disputed material facts, that is, on the amounts owed. The trial court's findings that the cases had been submitted to it for its decision, that is, that the facts including the ledger sheets' accuracy had been stipulated to, is thus clearly erroneous. Albert v. George, 15 FSM R. 574, 580 (App. 2008).

On appeal, the appellate court will review the evidence in the light most favorable to the appellee, and findings will be upheld when there is credible evidence to support them, in part because the trial court viewed the witnesses and their manner during testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

It was clear error by the Land Court to dismiss, based on a finding of lack of corroboration, a witness's testimony about the existence of an agreement to divide the land when a review of the record shows testimony from a number of witnesses referring to the existence of an agreement. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

A remand is proper when the court, reviewing the record as a whole, is convinced that the Land Court's decision is not based on substantial evidence because the Land Court found no corroborating evidence for a witness's testimony about an agreement to divide land but the record shows multiple witnesses testified regarding an agreement to divide land; because the Land Court made inconsistent findings regarding the effect of failing to exclude other heirs from using the land; and because the Land Court made no findings regarding the use of different portions of the land despite testimony from multiple witnesses that different heirs used different portions. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661-62 (Kos. S. Ct. Tr. 2008).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. For an appellate court to find that a trial court's finding is in error it must determine that the finding was clearly erroneous. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

The trial court was free to accept or reject the testimony that the reef in question is owned by Tomil and that the people of neighboring Rull had some fishing rights in the waters surrounding the reef, and the reviewing court will only set aside those findings of fact when there is no credible evidence in the record to support the finding as the trial court had the opportunity to view the witnesses and the manner of their testimony. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

Whether the evidence was sufficient to support the trial court's verdict for the appellees involves a review of the trial court's findings of fact and is reviewed under a "clearly erroneous" standard. An appellate court will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

Issues of whether the evidence was sufficient to support the trial court's verdict for the appellees and whether the trial court properly found that the evidence was insufficient to support appellants' claim of adverse possession are both issues that involve a review of the trial court's findings of fact under a "clearly erroneous" standard. An appellate court will overturn a trial court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Setik v. Ruben, 16 FSM R. 158, 162-63 (Chk. S. Ct. App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court's finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that

the appellants ever challenged the ownership of the land, the court will not overturn the trial court's ruling against the claim for adverse possession without anything to indicate error in the trial court's finding that the appellants' use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

For an appellate court to find that a trial court's factual finding is in error, it must determine that the finding was clearly erroneous. A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

The test as to the adequacy of trial court findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not another's, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

Although the appellants may consider the timing of a witness's rebuttal testimony to be problematic, when the witness's testimony is not contradictory to his testimony before rebuttal and when the trial court's findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness's direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When, given the trial court's wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court's findings, the appellate court will reject argument that the trial court's legal conclusions were erroneous because the trial court's factual findings are not supported by credible evidence. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

In considering whether a Land Court decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. A finding that substantial evidence supports the findings does not mean that the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When land claimants have apparently abandoned their earlier position that the land was given to their predecessor in 1917 and now assert that the land was acquired at a later time from some person not previously mentioned in the lengthy litigation over the land, and when the Land Court rejected the testimony supporting this new theory, and thus the theory itself, as not credible, the State Court, on appeal, can detect no error in that rejection since it is primarily the Land Court's task, and not the reviewing court's, to assess the witnesses' credibility and resolve factual disputes and the Land Court was present during the testimony. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya

was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about ¾ hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (Kos. S. Ct. Tr. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court's factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Simina v. Kimeuo, 16 FSM R. 616, 620, 624 (App. 2009).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

When a trial court's decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court's decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

The trial court need not state why it did not consider an issue or facts, it need only make a finding of such essential facts as provide a basis for the decision. The findings must be sufficiently comprehensive and pertinent to the issue to form a basis for the decision and be pertinent to its conclusions of law. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. When trial court findings are alleged to be clearly erroneous, an appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. The trial court's findings are presumptively correct. George v. George, 17 FSM R. 8, 9-10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the

plaintiff $6,220.52, the trial court decision did not violate the defendant's due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A trial court's findings are presumptively correct and findings of fact are reviewed using the clearly erroneous standard. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

On appeal of a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review for findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or, if after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Peter v. Jessy, 17 FSM R. 163, 170-71 (Chk. S. Ct. App. 2010).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Because findings of fact must not be set aside unless clearly erroneous, the appellate court starts its review of a trial court's factual findings by presuming the findings are correct. If it determines that substantial evidence supports the trial court's findings, it does not mean that the evidence was uncontroverted or undisputed. Rather, if the findings were adequately supported and the evidence was reasonably assessed, the findings will not be disturbed on appeal. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determine the trial court's findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff's burden of proof. The trial court's answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

When, given the trial court's wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court's findings, the appellate court will reject an argument that the trial court's legal conclusions were erroneous because the trial court's factual findings are not supported by credible evidence. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A trial court's grant or refusal to adopt an expert's opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court's legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court's factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

The appropriate standard of review cannot be applied to an appellant's assertions of fact when she does not identify which of the trial court's findings were not supported by substantial evidence and when she does not explain or analyze how those findings were not supported by the testimony elicited and introduced at the trial. Absent these arguments and assertions, the appellate court need not further analyze this issue. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Although issues of law are reviewed *de novo* on appeal, the standard of review for trial court findings of fact is whether those findings are clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

A trial court's factual findings are presumptively correct. When an appellant asserts that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

When an appellant asserts that a trial court finding was erroneous but has not provided a full trial transcript, the appellate court cannot determine whether that finding is clearly erroneous or that the trial court should have made a different finding and the trial court's findings of fact will thus remain the only facts on which the appellate court can decide the appeal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

When an appellant challenges a trial court factual finding that is presumptively correct, in the absence of a trial transcript, that finding must stand as fact, especially when, even with a trial transcript, it would have been difficult to show that this finding was clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R.

339, 347 (App. 2011).

Absent a trial transcript, a presumptively-correct trial court finding must stand as fact. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

If an issue was actually tried and evidence on the matter admitted with the parties' implied or express consent, it must be treated as if it was raised by the pleadings and the trial court should have ruled on it and granted whatever relief, if any, the plaintiff had proven herself entitled to. But when, without a transcript, it is impossible for the appellate court to determine if the retaliation issue was actually tried with the parties' consent, express or implied, the appellate court will not consider this assignment of error because there is nothing to show that it was ever properly before the trial court since the plaintiff never sought to amend the pleadings to include it although she had ample opportunity to do so, and there is no evidence that it was ever tried by the parties' express or implied consent. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350-51 (App. 2011).

The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. A trial court's findings are presumptively correct. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

When an appellant claims that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

If an appellant asserts that there was no evidence to support certain findings or that the evidence compels a different finding but has not provided a full transcript, the appellate court cannot determine that the trial court's findings were clearly erroneous or that the trial court should have made other findings. Thus, without a trial transcript, the appellate court will be unable to identify any trial court finding of fact as clearly erroneous, and the trial court's findings of fact will remain the only facts on which the appeal can be decided. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Findings of fact will be reviewed on the clearly erroneous standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A finding of actual damages is a finding of fact, and findings of fact are reviewed on the clearly erroneous standard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When the appellant never brought up the issue of actual damages in the civil rights claim at the trial level, that issue is not properly before the appellate court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437-38 (App. 2011).

Those parts of a trial court decision that are findings of fact are reviewed on the clearly erroneous

standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, and if, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Inherent within the trial court's description that the size of the judgments is "unwieldy" is a statement of fact and the recognition that Chuuk had a limited ability to pay and although the appellate court may sympathize with the plaintiffs' frustration, it must not substitute its judgment for that of the trial court without feeling a definite and firm conviction that a mistake has been made and that these statements of fact were "clearly erroneous." Stephen v. Chuuk, 17 FSM R. 453, 460-61 (App. 2011).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

When the appellants have submitted the trial transcript, as well as a translation, that includes numerous references by multiple witnesses to the alleged customary gift to the appellants, the appellate court, upon reviewing all the evidence in the record, including the translated transcript, is left with the definite and firm conviction that a mistake has been made, and therefore concludes that the trial court was clearly erroneous in finding that there was "no material evidence" of the customary gift. Setik v. Ruben, 17 FSM R. 465, 471-72 (App. 2011).

Since a trial court's findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court's findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Generally, an appellate court does not make factual findings. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin,

17 FSM R. 650, 656 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

Generally, a finding of fact, though presumptively correct, may nevertheless be reversed or vacated if a challenger proves clear error. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 14 (Kos. S. Ct. Tr. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court's finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

When it is apparent from the pleadings that genuine issues of material fact are present and when it is apparent that the trial court's judgment included rulings on disputed factual issues, the case was not one that was appropriate for resolution by summary judgment and thus the trial court judgment must be vacated and the matter remanded for trial. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct, but when trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

That the trial court found other testimony more credible than one witness's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court's findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the

appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

An appellate court does not decide factual issues de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

An appellate court does not make factual findings. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

The appellate standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the trial court record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the court is left with a definite and firm conviction that a mistake has been made. It cannot substitute its judgment for that of the trial court. Kosrae v. Edwin, 18 FSM R. 507, 511-12 (App. 2013).

When the appellant does not point to any evidence in the record that would lead the appellate court to feel that a trial court finding was clearly erroneous, that trial court finding must stand. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

A trial court's findings are presumptively correct. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

The standard of review of trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

An appellate court cannot substitute its judgment for that of the trial court. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

A trial court's "findings" are the facts as found. To be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and

firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court's task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A finding is clearly erroneous when the reviewing court is left with the definite conviction that a mistake had been committed. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Since a trial court's findings are presumptively correct, any challenged findings of fact will be reviewed on a clearly erroneous standard. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300-01 (App. 2014).

When the appellant does not challenge the trial court's factual findings about the lack of notice or the improper makeup of the land registration team, those trial court findings of fact must stand. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumed correct. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

When trial court findings are alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made, but the appellate court cannot substitute its judgment for that of the trial court. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

A trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

To be clearly erroneous, a decision must strike the court as more than just maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

The trial court's conclusion upholding an employee's termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Case law mirrors Kosrae State Code § 11.614(5)(d)'s statutory directive, in that the State Court's review must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. The standard of appellate review regarding sufficiency of the evidence, is very limited; only findings that are clearly erroneous can be set aside. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a

conclusion and consists of more than a scintilla of evidence but may be less than a preponderance. The Kosrae State Court, when reviewing a Land Court decision, applies the substantial evidence rule and does not determine where, in its view, the preponderance of the evidence lies but must determine if the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the State Court must affirm the Land Court decision even if the evidence would not, in its view, amount to a preponderance of the evidence and even if it would have decided it differently. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

The standard of review, concerning a trial court's findings of fact, is whether such determination is clearly erroneous. Since a trial court's findings are presumptively correct, when trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 20 FSM R. 178, 184-85 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court appellate division, when scrutinizing a Kosrae State Court decision, which in turn reviewed a Land Court decision, is whether the former abused its discretion, to wit: did the State Court fail to properly apply its standard of review in this particular case. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed. If findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal since the reviewing court should not substitute its judgment for the lower court's well-founded findings. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

In determining whether a factual finding is clearly erroneous, an appellate court must review the evidence in a light most favorable to the appellee and will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the demeanor of the witnesses, alongside their respective testimony. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

If the appellate court, after having pored over all the evidence in the record, is left with a firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

When one can safely deduce from the Kosrae State Court's memorandum of decision that it found that substantial evidence was propounded in the Land Court to support that court's decision and as a result,

affirmed same, and when the FSM Supreme Court appellate division was afforded the opportunity to review each side's appellate briefs as well as entertain oral argument, it similarly ruled that the Kosrae State Court decision affirming the Land Court's ruling was accurate, given a meticulous review of the entire evidence and resultant absence of a definite/firm conviction that any mistake has been committed. Ittu v. Ittu, 20 FSM R. 178, 186-87 (App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and, except for the official record, no evidence or testimony is considered at the appeal hearing. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 192-93 (App. 2015).

The standard of review, concerning a trial court's findings of fact, is whether such determination is clearly erroneous. A trial court's findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193-94 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court, in determining whether a factual finding is clearly erroneous, must review the evidence in a light most favorable to the appellee. The reviewing court will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the witnesses' demeanor, alongside their respective testimony. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When, after having pored over all the evidence in the record, the appellate court is left with the firm conviction that a mistake has been made, it may then conclude that the trial court finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When the FSM Supreme Court determines the Kosrae State Court decision contained a sufficiently comprehensive analysis, referencing the factors taken into consideration in formulating its ruling and when one can safely deduce from the Kosrae State Court's memorandum of decision that it found substantial evidence propounded in the Land Court to support its decision and therefore affirmed same, the FSM Supreme Court appellate division will find that the Kosrae State Court decision, affirming the Land Court ruling, was accurate, given a fastidious review of the entire evidence and resultant absence of a definite/firm conviction that any mistake had been committed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

A determination that substantial evidence supports the finding, does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

A reviewing court will take every precaution not to second guess a trial court's finding of fact because, when the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is

other credible evidence in the record to support the trial court's finding of fact, which an appellate court should not set aside. When there is credible evidence in the record to support that finding, in part because the trial court has the opportunity to view the witnesses and the manner of their testimony, the reviewing court should not substitute its judgment for the lower court's well-founded findings. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before it that led to that conclusion, there is no reason for the appellate court to disturb this conclusion, as it was supported by credible evidence and the trial court had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the Kosrae State Court's memorandum of decision contained a detailed analysis which cogently recapped the aggregate testimony from the Land Court and thoroughly reviewed the record, including the Land Registration Team's finding of fact and was privy to the appellants' appellate brief and when that court undertook a painstaking review to substantiate its respective ruling, its memorandum of decision was sufficiently comprehensive to refute the appellants' position. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195-96 (App. 2015).

An appellants' claim that a lower court decision did not address all the issues raised, is not a basis for remand, as long as the decision denotes the essential facts that provide a basis for such ruling. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The test, with respect to the adequacy of the findings, is whether they are sufficiently comprehensive and pertinent to the issue, in terms of formulating a basis for the decision. A court need not state why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for the decision. Simply because the Kosrae State Court's memorandum of decision did not specifically articulate why sundry "essential facts" cited by the appellants' brief were insufficient to sway that court, does not necessarily imply they were ignored. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court's findings are presumed correct, and the appellate court cannot substitute its judgment for that of the trial court. When a trial court finding is alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

That the trial court found one witness's testimony more credible than another's, is not a ground for reversal since the trial judge was in the best position to judge the witnesses' demeanor and credibility by observing them and the manner in which they testified. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

The standard of review for trial court factual findings is whether those findings are clearly erroneous since trial court findings are presumed correct and the appellate court will not substitute its judgment for the trial court's. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

When an appellant claims that a trial court finding is clearly erroneous, an appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if,

after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

That the trial court found one witness's testimony more credible than another's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge was able to observe the witnesses and the manner in which they testified. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426, 427 (App. 2016).

The appellate court may disregard an assignment of error that a factual finding was clearly erroneous when, even if the finding was clearly erroneous, it would not affect the case's outcome. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

When the trial judge was able to observe the witnesses while they testified and the trial judge found one witness's testimony more credible than another's and analyzes why, the appellate court will not disturb that finding if it is supported by credible evidence in the record since the trial judge had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

The appellate court will usually not hold a trial court finding clearly erroneous when it was the result of weighing conflicting evidence. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

A court determines that a finding is clearly erroneous when, although there is some evidence to support it, the reviewing court examines all the evidence and is left with the definite and firm conviction, that a mistake has been committed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

Simply because, when the trial court denied the imposition of Rule 11 sanctions on the bank's attorney, it did not specifically articulate its reasoning for not imposing Rule 11 sanctions on the bank, does not necessarily imply that due consideration was lacking, in terms of such a prospect. A trial court need not state why it did not consider an issue or fact, it need only make a finding of such essential facts, as provide for a basis for the decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

When there was more than ample evidence that the bank, as well as its attorney, conducted due diligence and thereby, reasonable inquiry into the documents' signatories, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

With respect to an allegation that a decision is clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record, or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law, or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a firm conviction that a mistake has been made. In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week old unrefrigerated dead fish. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

The test to be utilized in determining the adequacy of findings and thus the sufficiency of evidence, is whether they are comprehensive and pertinent to the issue at hand, in terms of formulating a sound basis for the decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Determining when documents were submitted is purely a factual determination more suited for a trial court. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

If, after poring over all the evidence in the record, the appellate court is left with a firm conviction that a mistake has been made, it may then conclude that the finding was erroneous, but it cannot substitute its

judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

A trial court's findings are presumptively correct. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

When the trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

In order to be clearly erroneous, a decision must strike the appellate court as more than maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

Substantial evidence is evidence which a reasonable mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence, but less than a preponderance. A court, reviewing a claim that substantial evidence is lacking, cannot substitute its judgment for that of the trial court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118-19 (App. 2017).

When an appellate court finds nothing that contradicts a Trust Territory High Court judgment previously rendered on the issue of ownership of the land in question and the state court decision is based solely on the prior High Court decision, the trial court will be affirmed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

The trial court need not say why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for its decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120 (App. 2017).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Standard – Criminal Cases

The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Engichy v. FSM, 1 FSM R. 532, 546 (App. 1984).

An appellate court should not overrule or set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Engichy v. FSM, 1 FSM R. 532, 557 (App. 1984).

The appellate process contemplates that any issue brought before an appellate court will first have been ruled upon by a trial judge. Loch v. FSM, 2 FSM R. 234, 236 (App. 1986).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. In the absence of an objection in the trial court the appellate division will refuse to consider the issue. Loney v. FSM, 3 FSM R. 151, 154 (App. 1987).

For false evidence to lead to reversal of a conviction, there must be some reason to believe that the trier of fact may have been misled and that this may have contributed to the conviction. Bernardo v. FSM, 4 FSM R. 310, 314 (App. 1990).

In a criminal case, the task of an appeals court is to determine whether the trier of fact could reasonably have been convinced of the charge beyond a reasonable doubt by the evidence. Tosie v. FSM, 5 FSM R. 175, 178 (App. 1991).

The test on appeal is not whether the appellate court is convinced beyond a reasonable doubt, but whether the trial court acting reasonably is convinced. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

An issue raised in closing argument at trial can be properly brought before the appellate court. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

In reviewing a criminal conviction on appeal the appellate court need not go beyond the standard of review in Engichy v. FSM, 1 FSM R. 532, to require that the test be whether the trier of fact could reasonably conclude that the evidence is inconsistent with every hypothesis of innocence. Jonah v. FSM, 5 FSM R. 308, 310-11 (App. 1992).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

An issue not raised at trial cannot be introduced for the first time on appeal. Alfons v. FSM, 5 FSM R. 402, 404 (App. 1992).

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).

In an appeal of a criminal conviction, before the appellate court can conclude that a trial court error was harmless, the court must conclude that it was harmless beyond a reasonable doubt. Yinmed v. Yap, 8 FSM R. 95, 99 (Yap S. Ct. App. 1997).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

When facts not controverted are admitted, or have been assumed by both parties, the failure to make findings thereof does not necessitate a remand. Nelson v. Kosrae, 8 FSM R. 397, 403-04 (App. 1998).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An issue of whether there was any testimony presented to show that the defendant was threatened by imminent unlawful bodily harm would not really be an issue since even if there was such testimony, the issue is whether the trial court could have reasonably found that other contrary testimony was more credible or carried more weight. Neth v. Kosrae, 14 FSM R. 228, 232 n.1 (App. 2006).

In a criminal case, the appellate court's responsibility is to determine whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence presented. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt, but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had the right to believe and accept as true. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When the defendant raised as a ground for his motion to recuse the trial judge that the trial judge participated in the plea negotiations, in violation of Kosrae Criminal Procedure Rule 11(e)(1), although the defendant did not argue that the trial court's involvement in plea discussions violation warranted vacation of his conviction, (only that it warranted recusal), the issue was not forfeited. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

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).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court's determination, and, if, after its independent review of the facts and the trial court's reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge's determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

When, after the appellate court's independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court's statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants' motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

When a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice and the party makes the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such

considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in reaching its guilty verdict. Engichy v. FSM, 15 FSM R. 546, 558-59 (App. 2008).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Constitutional constraints would bar the appellate reversal of a not guilty finding since both the FSM Constitution and the Kosrae Constitution protect an accused from being twice put in jeopardy for the same offense. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Although many jurisdictions authorize prosecution appeals when a trial court's interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

– Standard – Criminal Cases – Abuse of Discretion

Normally the trial court fashions the remedies and sanctions for a party's failure to comply with discovery requirements. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM R. 532, 558 (App. 1984).

Normally the trial court fashions the remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Bernardo v. FSM, 4 FSM R. 310, 313 (App. 1990).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion

resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). Yalmad v. FSM, 5 FSM R. 32, 34 (App. 1991).

The trial court's denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court's underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

A trial court abuses its discretion when it renders a decision that is clearly unreasonable, arbitrary, or fanciful, based on an erroneous conclusion of law, or unsupported by the evidence. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

When the trial court asked the government to redact the other defendants' names from one co-defendant's affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government's failure to provide a redacted copy of the statement, that choice was within the trial court's discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. The burden is on the appellant to show an abuse. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

For purposes of review, the trial court has substantial discretion in deciding questions concerning the admissibility of evidence. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court's review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie showing as to the documents' authenticity. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4's time requirements or to grant a motion to extend time to appeal, a lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard.

Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

– Standard – Criminal Cases – Clearly Erroneous

A conviction for robbery is a finding which can only be reversed if the court's finding is clearly erroneous. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

A conviction of a crime can only be reversed if the court's finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

The trial court's denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court's underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

When the appellate court is asked to review the trial court's legal conclusion that the Kosrae DUI statute was constitutional, the appellate court will restate the issue as, whether the trial court correctly concluded that, as a matter of law, Kosrae State Code Section 13.710 is not void for vagueness since "clearly erroneous" is applied on appeal to findings of fact made by the trial court in civil cases. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge, and because findings of fact must not be set aside unless clearly erroneous, an appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Engichy v. FSM, 15 FSM R. 546,

552 (App. 2008).

An appellate court cannot say that a trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence because an appellate court will not reweigh the evidence presented at trial, and since credibility determinations are uniquely the province of the factfinder, not the appellate court. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

An appellate court should not overrule or set aside a trial court's finding of fact when there is credible evidence in the record to support that finding. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

The standard of review of a trial court's findings is whether those findings are clearly erroneous. In making this determination, the appellate court must view the evidence in the light most favorable to the appellee, and if, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

– Standard – Criminal Cases – De Novo

The question of whether a municipality has the legal authority to impose license fees or taxes solely as a revenue measure is a pure question of law, and on appeal, questions of law are reviewed *de novo*. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

If, as a matter of law, a state statute preempts any local regulation of the possession and sale of alcoholic beverages, and if the municipality is also precluded from imposing license fees or taxes for revenue purposes only, a municipal conviction for possession and sale without a municipal license must be overturned and the defendant found not guilty of the infraction as a matter of law. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

In order for the defendant to prevail on appeal, it is necessary to determine whether a municipality has the constitutional or statutory authority to raise revenue by imposing licensing fees and taxes on businesses that engage in alcoholic beverage sales even though the municipality did not raise the issue of its power to impose business license fees or taxes for revenue, rather than regulatory purposes because, as a general rule, a lower court decision will not be reversed if based upon any proper ground. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

On appeal, issues of law are reviewed de novo. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

On appeal, the appellate court reviews issues of law de novo. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence

challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

All issues of law are reviewed *de novo* on appeal. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

Whether, as a matter of law, a variance between the FSM's allegations and the evidence adduced at trial and relied upon by the trial court in its findings unfairly prejudiced the accused, is an issue reviewed *de novo*. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

Issues of law are reviewed de novo. Lee v. Kosrae, 20 FSM R. 160, 164 (App. 2015).

– Standard – Criminal Cases – Plain Error

The appellate court may notice error, even though not properly raised or preserved in the trial court, where the error affects the substantial rights of a minor under the particular circumstances of a case. In re Juvenile, 4 FSM R. 161, 164 (App. 1989).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Appellate courts may notice plain error where the error affects the substantial rights of the defendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 (App. 1996).

Generally, when a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant's constitutional rights has occurred, the court may notice that error on its own. An appellate court may notice plain error when the error affects a criminal defendant's substantial rights. Nena v. Kosrae, 14 FSM R. 73, 77 (App. 2006).

Under the constitutional guarantee of a public trial, an accused and the public both have a constitutional right that the court's finding be announced publicly in open court with the accused present. This is true whether the finding is guilty or not guilty. Violation of this constitutional protection is not subject to a harmless error analysis and the defendant need not show any prejudice. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

When a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant's constitutional rights has occurred, the court may notice the error on its own. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

An appellate court may notice plain error when the error affects a criminal defendant's substantial rights. The plain error exception also applies when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

Violation of the constitutional public trial right is not subject to a harmless error analysis and the defendant need not show any prejudice. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When, after the trial court had taken the case under advisement, it made its finding of guilt in writing and the written finding was then served on counsel and there was never an oral in-court pronouncement of guilt beforehand, and when, following the sentencing hearing, there was no public imposition of sentence in open court, only a later written sentencing order served on counsel, an appellate court must vacate the finding because it was improperly entered since there was no public finding of guilt. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When an issue has been forfeited through failure to raise and preserve the issue, an appellate court may address it only when there has been a plain error affecting the defendant's constitutional rights; or when the error affects a criminal defendant's substantial rights; or when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When an issue is not raised in the appellate briefs or oral argument, the appellate court should (but not must) exercise its discretion to notice a forfeited error if that error seriously affects the judicial proceeding's fairness, integrity, or public reputation. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The appellate court may notice plain error when the error affects a criminal defendant's substantial rights, such as his right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206-07 & n.2 (App. 2013).

– Standard – Criminal Cases – Sentence

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. Malakai v. FSM, 1 FSM R. 338, 338 (App. 1983).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM R. 266, 274 (App. 1990).

If the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such individualized sentencing decision would be entitled to the deference accorded to findings of fact. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

In a criminal case, the appellate court may commute, reduce, or suspend the execution of sentence, but when the appellate court has held that the trial court did not abuse its discretion in considering and imposing its sentence on the defendant for the offense committed, it will find no way to commute, reduce, or suspend the sentence. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

A criminal sentence may be affirmed when a review of the record reveals that the sentence is appropriate, and, if the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such an individualized sentencing decision would be entitled to the deference accorded to findings of fact. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The standard of review of a trial court's decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions' protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge's decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

In reviewing a trial court's sentencing decision, the standards generally applied in criminal appeals are followed – findings of fact that are supported by credible evidence are upheld but those legal rulings with which the appellate court disagrees are overruled since issues of law are reviewed de novo. Ned v.

Kosrae, 20 FSM R. 147, 152 (App. 2015).

The better practice is for the trial court to impose sentence on each count individually and to indicate on the record whether the sentences are to run concurrently or consecutively. Such a sentence facilitates appellate review, and obviates the need for the appellate court to review the entire sentence's propriety in the event any count underlying a general sentence is vacated. Thus, if any part of a conviction is reversed on appeal, the sentence imposed under the valid count would not have to be disturbed. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

– Standard – Criminal Cases – Sufficiency of Evidence

In considering challenges that there was insufficient evidence to justify the trial court's findings that the defendant aided and abetted, and is therefore criminally liable for the assaults with dangerous weapons, the FSM Supreme Court recognizes its appellate tribunal's obligation to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. Engichy v. FSM, 1 FSM R. 532, 545 (App. 1984).

The standard to be applied in reviewing a trial court's finding of intention to kill is not whether the appellate court is convinced that there was intention to kill but whether the appellate court believes that the evidence was sufficient to persuade a reasonable trier of fact beyond a reasonable doubt of the intention to kill. Loch v. FSM, 1 FSM R. 566, 575-76 (App. 1984).

Standard to be applied in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Runmar v. FSM, 3 FSM R. 308, 315 (App. 1988).

In reviewing the sufficiency of evidence to warrant conviction, the issue is whether the evidence, viewed in a light most favorable to the finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. Welson v. FSM, 5 FSM R. 281, 285 (App. 1992).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is whether the appellate panel, in considering the evidence in the light most favorable to the trial court's findings of fact, determines that a reasonable trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. Alfons v. FSM, 5 FSM R. 402, 405 (App. 1992).

In reviewing a criminal conviction against an insufficiency of the evidence challenge, the appellate court must ask whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. Nelson v. Kosrae, 8 FSM R. 397, 401 (App. 1998).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

Insufficiency of the evidence argument is not available to criminal appellants when a transcript of all evidence relevant to such finding or conclusion is not included in the record on appeal. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When an appellant has failed to provide a transcript of the relevant evidence and failed to identify the portions of the record that support his argument, he has failed to demonstrate that the trial court has erred as a matter of law in imposing sentence, and the presumption is that the evidence was sufficient to sustain

the trial court's judgment. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

In a criminal appeal, the appropriate standard of review for sufficiency of the evidence questions is whether, reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

In reviewing the sufficiency of evidence to warrant conviction, the issue before an appellate court is whether the evidence, viewed in a light most favorable to the trial court's finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. The appellate court must be able to conclude that no trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A conviction of a crime can only be reversed if the court's finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When there is ample evidence in the record to support the trial court's finding, the appellate court will conclude that there is sufficient evidence in the record for a reasonable trier of fact to find beyond a reasonable doubt that appellant used none of the national government funds allotted to him for the construction of a new community hall. Moses v. FSM, 14 FSM R. 341, 345 (App. 2006).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

In the appeal of a criminal matter, when considering challenges of insufficient evidence to justify the trial court's findings, an appellate tribunal is obligated to review the evidence in the light most favorable to the trial court's factual determinations and this standard of review extends to inferences drawn from the evidence as well. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court need not conclude that the evidence is inconsistent with every hypothesis of innocence in order to affirm the conviction. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant's affidavit against the other defendants and when the trial court, in its special findings made at the trial's conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant's affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants' participation in the conspiracy wholly independent of and detached from the one co-defendant's affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant's affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When credible evidence in the record supports the trial court's findings and presents a coherent, believable, overall picture and when, after reviewing the entire record on appeal in the light most favorable to the trial court's factual determinations and inferences, the appellate court finds there is sufficient evidence to support the trial court's findings of guilt beyond a reasonable doubt, the appellants' convictions will be affirmed. Engichy v. FSM, 15 FSM R. 546, 559 (App. 2008).

The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. This standard of review extends to inferences drawn from the evidence as well. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in finding the defendants guilty. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The standard of review applied to a sufficiency-of-the-evidence challenge in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

A factual finding will not be set aside when there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

To be clearly erroneous, a decision must be more than just maybe or probably wrong; it must be wrong with the force of a five-week-old unrefrigerated dead fish. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

An appellant cannot pass the sufficiency-of-the-evidence test when it is evident that the victim's testimony provided substantial evidence that the trial court found credible and reliable; when the trial judge recited credible, substantial evidence to support the guilty finding; when the trial judge had the opportunity to view the witnesses and the manner of their testimony and chose to believe as credible the victim's testimony, which the judge had the right to believe and accept as true, and to reject the defendant's own testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The prosecution, by proving sexual assault, also proved that the accused annoyed or disturbed the victim and that he caused her bodily harm so that, just as there was sufficient evidence to find him guilty of

sexual assault, there was also sufficient evidence to find him guilty of the other lesser offenses. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

– Stay – Civil Cases

A motion to the state appellate division to stay state trial court proceedings pending appellate court issuance of a promised detailed written opinion explaining appellate denial of an earlier petition for writ of mandamus against the trial judge is denied where: 1) there was no presently scheduled proceeding to take place at the trial level although the trial judge had instructed the parties to be prepared to proceed if the writ was denied; 2) an appellate opinion is to be written informing the parties of the reasons for dismissal of the petition for writ of mandamus; 3) the constitutional issues of first impression were resolved in the denial of the writ; 4) a matter that has been ruled upon and completed such that no other action is required except for the issuance of an opinion will not support a motion to stay on the appellate level; and 5) no motion to stay had been requested of the trial court. Etscheit v. Adams, 4 FSM R. 242, 244 (Pon. S. Ct. App. 1990).

When an appellant has applied to the appellate division for a stay it normally will be considered by all justices of the appellate division, but in exceptional cases application may be made to and considered by a single justice. The power of the appellate division or a single justice thereof to stay proceedings during the pendency of an appeal is not limited by the Rules of Civil Procedure. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 222 (App. 1993).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 276-77 (Pon. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The criteria for granting a stay pending appeal under Rule 62 are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277-78 (Pon. 1993).

When summary judgment is granted enjoining trespassing farmers, removing the farmers from the land while their appeal is pending might more substantially alter the status quo than a stay allowing them to remain on the land. Ponape Enterprises Co. v. Luzama, 6 FSM R. 276, 278 (Pon. 1993).

A stay on appeal may be granted even when the moving party has less than a 50% chance of success if the question is a difficult one, or an issue of first impression about which respectable minds might differ. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 279 (Pon. 1993).

An appellant may apply to the trial division for a stay of judgment. If the stay is denied by the trial division he may apply to the appellate division. If the stay is granted and its terms seem onerous, the petitioner may apply to the appellate division for a modification of the stay, and may also request an expedited briefing schedule. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The FSM Code provision authorizing the general powers of the Supreme Court gives the court the authority to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

Factors for a court to consider in determining it whether should exercise its discretion to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues include whether judicial economy will be furthered by a stay because the cases on appeal may have claim

or issue preclusive effect on the case to be stayed; the balance of the competing interests; the orderly administration of justice and whether the case is one of great public importance. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

A stay should be granted in one case pending the outcome of another case on appeal which addresses the same or similar issues, when it is in the interests of avoiding the waste of judicial resources, managing the court's calendar, sparing the parties unnecessary litigation efforts, and avoiding inconsistent or confusing outcomes, especially if granting the stay will not adversely affect the parties opposing the stay to any substantial extent because they are also parties to the other case on appeal. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 415-16 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of judgment by a trial court is an action in aid of the appeal. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

In exceptional cases when consideration by the appellate panel would be impracticable due to time requirements, an application for a stay may be made to and considered by a single Chuuk State Supreme Court justice. In re Contempt of Umwech, 8 FSM R. 20, 21 (Chk. S. Ct. App. 1997).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

A single justice may consider a motion for a stay when time requirements and geographical dispersion make it impractical for it to be considered by the full appellate panel. In re Recall Election, 8 FSM R. 71, 73-74 (App. 1997).

A motion for a stay will be denied when it does not show that application to the court appealed from is impractical or that the court appealed from has denied the relief requested accompanied by that court's reasons for the denial. In re Recall Election, 8 FSM R. 71, 74 (App. 1997).

Motions to stay proceedings during an appeal are governed by Rule 62, CSSC Rules of Civil Procedure, which is near identical to the corresponding rule of the FSM Supreme Court and the Federal rules of the United States. The criteria for granting a motion to stay pending appeal are the same as for equity jurisdiction for the granting of an injunction. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When a stay application to the court appealed from is not practicable because the trial justice is unavailable and ill and out of the country for an extended time an appellant may apply for a stay in the appellate division. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 354-55 (App. 2000).

One reason to grant a stay on appeal is if the court is persuaded that the appellant will prevail on the merits of the appeal. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Generally, there are four factors to weigh before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

A stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits of its claim that a use tax is permitted under the FSM Constitution and has not shown that its injury is irreparable, even though there might be no harm to the only other party to the appeal, and the public interest favors neither granting nor denying a stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355-56 (App. 2000).

The court may order that, before a stay pending appeal will be granted in the appellant's favor, the appellant must post an appropriate cash bond which would fairly compensate the appellee should the appeal be unsuccessful. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

If an appellee prevails on appeal it will be entitled to recover its trial court and appellate costs, and the court may add the trial court costs to the amount of the appeal bond required for a stay. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

The trial court may require an appellant to file a bond to cover costs on appeal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

Interest earned on an appellate bond placed in an interest-bearing account will be given to the party

entitled to the principal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A case will not be stayed pending the appeal of another when two different accidents, involving different victims, provide the bases for the two cases. Each case must ultimately rest on its facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 465 (Pon. 2001).

An application for a stay of the judgment appealed from pending appeal must ordinarily in the first instance be made in the court appealed from, but a motion for such relief may be made to the appellate division or a justice thereof when the motion shows that: 1) application to the court appealed from for the relief sought is not practicable; 2) that the court appealed from has denied an application; or 3) that the court appealed from has failed to afford the relief which the applicant requested, with any reasons given by that court for its actions. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

A motion in the appellate division to stay will normally be considered by all justices of the court eligible to act with the appellate division in the case, but in exceptional circumstances when such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single FSM Supreme Court justice. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

Civil Rule 62 does not limit the power of the appellate division, or a single justice thereof, to stay proceedings during the pendency of an appeal. The appellate division, or a justice thereof, may make any order appropriate to preserve the status quo. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

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The contention – that once a stay is issued the matter falls within the appellate division's jurisdiction, and the trial court is deprived of all jurisdiction to modify or vacate its stay – cannot be sustained. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court retains jurisdiction over the stay, even during the pendency of an appeal. The only time the trial division loses jurisdiction over the issue is when a stay is denied, which denial permits the appellant to seek a stay from the appellate division. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Jurisdiction over a stay remains in the trial court until such time as the trial court approves a supersedeas bond. This is so even after the notice of appeal is filed, and until approval of the bond, whenever that may occur. By failing to give a bond sufficient to obtain the trial court's approval, the appellant never obtains his right to a stay. Only the trial division has jurisdiction, in the first instance, to approve the bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court's power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal's pendency, until the appellate division's mandate issues. The trial court's power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

An appellant cannot argue that the issuance of a stay would not preserve the *status quo* when it would permit the appellant to reside in appellee's property, rent free, and without any obligation to pay rent, until an appellate session can be convened, and the appeal decided; or that a stay of execution that has not yet to come into effect as a result of the appellant's failure to offer a bond sufficient to protect the plaintiff's interests pending appeal could permit a continuing trespass. Konman v. Esa, 11 FSM R. 291, 296-97 (Chk. S. Ct. Tr. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot

demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

In order for the court to stay execution of a judgment, it is necessary for the defendant to offer a supersedeas bond to the court. That bond must be in a form, and in a sum sufficient to protect the plaintiff's interests, in the event that the defendant's appeal is unsuccessful. The only supersedeas bond which the court would find sufficient in form and amount, under the circumstances, would be a cash bond in a sum that would cover the premises's rental value during the defendant's wrongful occupation thereof, and would also cover any additional damages which plaintiff might prove upon remand from the appellate division. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

If no supersedeas bond is deposited with the court as required by its order, no stay shall be considered as having issued, and the plaintiff shall be free to seek enforcement of her judgment against the defendant, according to any lawful means at her disposal. Konman v. Esa, 11 FSM R. 291, 298 (Chk. S. Ct. Tr. 2002).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Pon. 2003).

The four factors that a court will consider in granting or denying a stay on appeal are: whether the applicant has shown that without the stay he will suffer irreparable harm; whether the stay would substantially harm other parties interested in the proceeding; whether the public interest would be served by a stay; and whether the applicant has shown that he is likely to prevail on the merits of the appeal. As to the last factor, a stay may be granted even if there is less than a 50% chance of prevailing on appeal when the issue is difficult, or when it is one of first impression over which reasonable minds may reach different conclusions. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Chk. 2003).

No stay pending appeal is warranted when the defendant will not suffer irreparable harm if no stay is granted because it undeniably owes the judgments, as liability is not an issue on appeal since the only issue for appeal purposes is how the judgments will be paid; when the stay would harm the plaintiffs by further delaying exoneration of the constitutional rights that the judgments are intended to vindicate; when all citizens have an interest in preserving the constitutional rights guaranteed to all and would be disserved by the further delay in the judgments' satisfaction; and when the issue presented, although one of first impression, does not alone compel the conclusion that a stay should issue in light of the other considerations – a material one being that liability is not at issue. Estate of Mori v. Chuuk, 12 FSM R. 3, 7-8 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Even assuming without deciding for the sake of a motion to stay that the FSM Development Bank is an agency of the national government, FSM Civil Rule 62(e) contains two conditions precedent that must occur in order for the requirement of an appeal bond or other security to be dispensed with: the appeal must be taken by the national government or an agency thereof, and the enforcement of the judgment must have been stayed. Only then does the waiver of the bond requirement apply. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 351 (Pon. 2004).

Under the plain reading of Rule 62(e), the court must first determine whether the judgment against the FSM Development Bank should be stayed pending appeal. If the judgment is stayed then, and only then, may the bank avail itself of the waiver of a bond or other security provided for by Rule 62(e). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352 (Pon. 2004).

Ours is a developing nation, and preserving the balance among our government's three branches established by our Constitution is of utmost importance. The FSM Supreme Court must remain sensitive to this concern. To read Rule 62 subparagraphs (d) and (e) to give the FSM national government or an agency thereof a blanket right to stay any judgment of this court, regardless of the terms of the stay and regardless of the appeal's merit or lack thereof, would be to create a constitutional puzzle. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352-53 (Pon. 2004).

The court is disinclined to exercise its discretion to grant a stay in the appellant's favor pending the appeal when that party unsuccessfully attempted to evade the discovery process by refusing, willfully and in bad faith, to disclose a document that the court has found established its liability to the plaintiffs as a matter of law, when its conduct generated a mountainous court file that resulted in the waste of the time of all involved, as well as increased costs to the other litigants, and when it could engage in such conduct with impunity without concern for whether its conduct made economic sense in terms of legal expenses incurred since it employs house 188
counsel. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

An application for a stay of the judgment or order of the court appealed from pending appeal must ordinarily be made in the first instance in the court appealed from. Thus the trial court retains jurisdiction over the case for deciding a motion to stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

When the case is one of public importance involving a novel issue of law, the court will consider four factors in determining whether to grant a stay pending appeal: 1) whether a strong showing has been made of the likelihood that the appellant will be successful on appeal; 2) whether irreparable injury to the appellant will result in the absence of a stay; 3) whether other interested parties would be harmed by the stay; and 4) whether staying the judgment on appeal would serve the public interest. In the usual case the first factor is the most important, but a stay is also appropriate in a substantial case when the equities reflected in the remaining factors weigh heavily in favor of granting the stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

An application for a stay of an order of the court pending appeal must ordinarily be made in the first instance in the court appealed from. Amayo v. MJ Co., 13 FSM R. 259, 261 (Pon. 2005).

No Chuuk state justice may hear or decide an appeal of a matter heard by the justice in the trial division, but the issuance of a stay is a procedural matter that does not require the justice issuing it to hear or decide the appeal. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

An application for stay must first be made in the trial division. If the trial justice issues a stay, that justice retains jurisdiction of the stay issue while the appeal is pending. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

An attack upon the Acting Chief Justice's authority to rule on a motion to stay as a single appellate justice must come from one of the parties, and in the proper forum – the appellate division, not by a trial judge. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

A motion to stay proceedings pending consideration of a petition for a writ of mandamus concerning a lawyer's representation is denied when there: 1) is no substantial possibility that an appellate panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented that favor a stay. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When the court's alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged errors persuasive, it could not possibly grant the relief sought – moving counsel's appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys' other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When there does not appear to be a substantial possibility that the appellate division will grant the writ of prohibition, the circumstances and the equities do not require a stay. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When a motion to stay the effect of the trial court judgment below was not filed in the court appealed from, as required by Appellate Procedure Rule 8(a), and when, only if the court appealed from denies the stay, or application to that court is not practicable, will the appellate division, on motion, consider a motion to stay, the appellate court will deny the motion to stay. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

When an appellant moved to stay the effect of the trial court judgment below and what the appellant sought to stay was the appellee State of Chuuk's payment to another of installments of the purchase price for the land in question, the only potential harm would be to the appellee state if it paid money to buy land and ended up receiving nothing because it had not paid the true owner. Accordingly, the motion to stay will be denied. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

When a trial justice makes no rulings on the motion to stay before him, he fails to exercise whatever discretion he may have had to rule on it because a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time and since the trial judge neglected his duties by ignoring the motion to stay and further abused his discretion by failing to rule on it before issuing an order in aid of judgment, the appellate court issuing a writ of prohibition barring the order in aid of judgment will stay any enforcement of the judgment until the appeal of the judgment has been decided. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

Generally, a court should weigh four factors before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178-79 (Pon. 2010).

When the appellant wants the court to stay, pending appeal, a court order that a lot be made available for immediate commercial lease, an appeal issue that involves only the amount of money damages awarded to the appellant is not pertinent to the stay request. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 & n.1 (Pon. 2010).

The court can see irreparable harm if the lot is awarded to another party who develops the lot and then the appellant prevails on appeal, but it cannot see irreparable harm from the bidding process going forward since the appellant may well be the successful bidder. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

There is no significant harm to others interested in the litigation when throughout the litigation, both claimants have been more interested in preventing the other from using Lot No. 014-A-08 than in actually using it themselves and neither made any effort whatsoever to further prosecute their claims (or to settle the matter) for three years until the court prodded them into action. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

When the Pohnpei Legislature has directed that Lot. No. 014-A-08 be leased in an expeditious manner, with the intent that all public land within its plat should be fully leased, the court cannot say that the public interest favors a stay of the bidding process to lease that lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

When the court, weighing the four factors, concludes that they do not favor a stay in the form sought by the appellant, the court will deny the motion for a stay without prejudice since the court would be willing to consider a motion that sought to stay an award of the lot to another if the appellant had submitted a bona fide bid for the lot and that would also allow the court to set a more accurate figure for an appeal bond – the amount of lease payments that the Board of Trustees could have received but would not receive while the appeal was pending. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

An offer of a supersedeas bond in the amount of the consummated sale price plus projected interest and costs, might entitle the appellants to a stay of the sale since a supersedeas bond's purpose is to protect the prevailing party below pending the appeal. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Generally, there are four factors to weigh before granting a stay pending an appeal in a civil case: 1) whether the appellant has made a strong showing that it is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay it will be irreparably harmed; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Even though there might be no harm to the only other party to the appeal and the public interest may favor neither granting nor denying a stay, a stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits and it has not shown that its injury is irreparable. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

A claim that if a property is worth $832,000 but being sold for $151,000, it is a serious irreparable harm that cannot be compensated or remedied, does not constitute an irreparable injury since, if it is an injury, it is an injury that can easily be compensated monetarily, and may, in this case, be accomplished more easily than is usual – by a reduction in the defendants' indebtedness to the bank, a quick and efficient remedy. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

The appellants' chances of success on appeal are slim when they have not put forth any basis to show that the court's reasoning for denying raising the minimum bid price from $120,000 to $832,990 was unsound or unconstitutional and when no FSM order in aid of judgment law relating to real property requires a certain minimum bid or requires that a minimum bid be set in a particular way, which is all that the court ruled on in the order appealed from. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269-70 (Pon. 2010).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

A collection case based on a defaulted loan is not a case or dispute in which an interest in land was at issue and so the FSM Constitution article XI, section 6(a) jurisdictional language is not applicable since an apartment building's sale is merely a post-judgment remedy sought by the judgment-creditor because other remedies had been ineffective. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

Even if the other two factors favor a stay, it would not be enough to overcome the appellants' lack of irreparable injury and of a substantial chance of a success on the merits. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

Generally, a court weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal's merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay's favor. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

Although it is not a trial court's place to rule on an appellate court's jurisdiction, an analysis of the first factor to weigh when considering a stay request – likelihood of success – may require that the trial court to express a view on the appellate court's jurisdiction over what has been appealed. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the trial court is unaware of any basis on which an appellate court can entertain an interlocutory appeal of a motion, it may conclude the plaintiff has virtually zero chance of success on the appeal's merits because the appellate court will not, for lack of jurisdiction, be able to even consider the appeal's merits, and when, even if the interlocutory appeal were from a severance order and not a motion, it is not apparent that, under these circumstances, an appellate court could exercise jurisdiction, the first and most important factor weighs most heavily against granting the plaintiff a stay. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the first and most important factor weighs most heavily against granting the plaintiff a stay and the second factor – irreparable harm to the appellant – also does not weigh in the plaintiff's favor because he cannot show any harm when the court has yet to rule one way or the other on its own pending motion, the other two factors are irrelevant since even if they favored a stay, they could not overcome the weight of the first two factors. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

An appellant's failure to obtain a stay does not affect an appeal's validity or the appellate court's jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. Berman v. Pohnpei, 18 FSM R. 418, 420 (App. 2012).

When affidavits are not attached to a motion for injunction during pendency of appeal but reference is made to affidavits filed earlier in the trial division that might be found in various places in the trial court record and when the other parts of the record that the movants deem relevant to their motion are also not attached to the motion, the movants have failed to comply with Appellate Rule 8(a)'s technical requirements. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the appellate court has not previously construed Appellate Rule 8(a)'s provisions about the

issuance of injunctions, it may consult U.S. authority for guidance because FSM Rule 8(a) is drawn from a similar U.S. rule. Berman v. Pohnpei, 18 FSM R. 418, 421 n.2 (App. 2012).

Litigants should not lightly seek injunctions pending appeal. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

An appellate court, in ruling on a request for an injunction pending appeal, must engage in the same inquiry as when it reviews the grant or denial of a preliminary injunction, and in considering whether to grant a preliminary injunction, courts consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Generally, the purpose of an injunction pending appeal is to maintain the status quo while the appeal is heard and decided. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants' likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

One who seeks an injunction pending appeal must show irreparable injury. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When what the movants seek to enjoin is not trespass and nuisance on their land but on a causeway or berm which is not their land and when the trial court denied their initial motion for injunction on January 7, 2009, they did not appeal that denial as they could have under Appellate Rule 4(a)(1)(B), the movants have not shown irreparable harm or injury. Berman v. Pohnpei, 18 FSM R. 418, 421-22 (App. 2012).

The balance-of-injuries factor will not weigh in the movants' favor when the movants ask that Pohnpei be ordered to take certain actions against non-parties at an unknown cost and with an unknown exposure by Pohnpei to potential liability to those non-parties while leaving the movants free of any expense or liability. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A preliminary injunction will not be issued when, regardless of where the public interest lies, that factor cannot overcome the other three and cause the issuance of the preliminary injunction sought. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A motion to stay pending appeal is moot when the appeal has been withdrawn. Perman v. Ehsa, 18 FSM R. 452, 454 n.1 (Pon. 2012).

When there is no basis for the court to depart from the procedures established for a stay to be put in place pending an appeal since the petitioner has other adequate remedies to obtain what he seeks and since the petitioner, who is also seeking an extraordinary writ of prohibition, has not met his burden to show that his right to the writ is clear and indisputable, the petition for a writ of prohibition will be denied. Ehsa v. Johnny, 19 FSM R. 175, 178 (App. 2013).

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int'l

Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

An application to the appellate division for a stay must show that an application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application with any reasons given by the court appealed from for its action. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

A motion for a stay must also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion must be supported by affidavits or other sworn statements or copies thereof, and such parts of the record as are relevant must be filed with the motion. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

When a party's application to the appellate division for a stay does not state what reasons were given by trial justice for her action in denying a stay and when if there were relevant parts of the record, none were provided, there is not enough before the appellate division for it to consider a stay. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

– Stay – Civil Cases – Money Judgments

The purpose of requiring a supersedeas bond for a stay is to protect the interests of the appellees. A bond protects the appellees by providing a fund out of which it may be paid if the money judgment is affirmed, and it meets the concerns of the appellee that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. The latter concerns are not present when the appellant is a state. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 223 (App. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The rule requiring a supersedeas bond to be posted before a stay may granted pending appeal is applicable only to appeals from money judgments. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of a money judgment pending appeal is effective when the appellant's supersedeas bond is approved by the court. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

The term "bond" in an appeal context includes more than the supersedeas bond in Civil Rule 62. One example is the bond for costs in Appellate Rule 7; another is the bond that may be required under Appellate Rule 8(b) (which does not use the word "supersedeas") when a motion for stay is brought in the appropriate circumstances in the appellate division. Regardless of the specific type of bond, the general principles applicable to appeal bonds and undertakings also apply in most cases to supersedeas bonds. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

In jurisdictions having statutory requirements for a supersedeas bond, a competent surety is ordinarily required. A surety is one who undertakes to pay money in the event that his principal fails therein, and who is primarily liable for the payment of debt or performance of the obligation of another. The appellant himself is generally not competent to stand as a surety on an appeal bond. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

A supersedeas bond's purpose is to protect the appellees' interest by providing a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. Amayo v. MJ Co., 10 FSM R. 427, 428-29 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

Due to the lack of an established Pohnpei real estate market, a mortgage offered in lieu of a supersedeas bond does not provide absolute security to an appellee. Realistically, the lack of a ready market for property also precludes a professional surety either inside or outside the FSM from accepting the property as bond collateral. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

When a supersedeas bond from a qualified surety is presented to the court, the appropriate vetting and assessment of financial information by a competent surety will have taken place, thus obviating the need for a court to engage in that process. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

When no stay has been ordered in a pending appeal, alien judgment-creditors may suggest, although no rule or other authority requires this, that any sums resulting from a levy on the judgment be deposited with the court in an interest bearing account, and the court, aware of the creditors' great financial distress resulting from the injury sued upon may order a portion of the money deposited to be paid over to plaintiffs' counsel. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

An appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in Civil Rule 62(a). The stay is effective when the supersedeas bond is approved by the court. Panuelo v. Amayo, 10 FSM R. 558, 560, 563 (App. 2002).

The purpose of a supersedeas bond is to protect the prevailing party below pending the appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

Because there is very little FSM law governing supersedeas bonds, the FSM Supreme Court may consult the laws of the United States for guidance, as the civil procedure rules in the United States district courts related to supersedeas bonds are similar to those in the FSM, but the court must also take into account the circumstances in the FSM, and independently consider suitability of the U.S. courts' reasoning for application in the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The amount of a supersedeas bond typically takes into account the amount needed to satisfy the judgment appealed from, as well as costs, interest, and any damages which may be caused by the stay pending appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

While reference to U.S. law is helpful in enunciating general principals regarding posting of supersedeas bonds, the reality of the financial markets in the FSM requires that the established U.S. requirement of posting of a full supersedeas bond, in cash or by a cash-backed surety, receive additional scrutiny. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When, given the general unavailability of cash-backed sureties in the FSM, an appellant would essentially be required to liquidate his several businesses in order to post a full cash bond, and in the absence of a stay, writs of execution would be enforced against appellant's property before his appeal is

resolved, and when the public interest would also be served by allowing appellant the opportunity to provide alternative security, the appellate division may order an alternative bond of $50,000 cash plus a substantial mortgage. Panuelo v. Amayo, 10 FSM R. 558, 564-65 (App. 2002).

In some cases, an abuse of discretion may be found when the trial court rejects, as an alternative to a full cash bond, a supersedeas bond of which a portion of the bond is in cash and a portion is in the form of a property mortgage. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

When the appellees' submission for partial distribution of the appellant's supersedeas bond complies with a single justice's previous orders concerning client contact, lost wages, and expenses incurred, the court will release the previously-ordered $20,000 distribution plus the pro rata interest on that amount. Panuelo v. Amayo, 11 FSM R. 205, 207-08 & n.1 (App. 2002).

When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The stay is effective when the court approves the supersedeas bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When defendants have not posted a supersedeas bond and have not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, they are not entitled to a stay under FSM Civil Rule 62(d). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

That defendants claim that they owe a different amount than that for which they were found liable and thus still contest liability is not a basis for a stay pending the appeal when the plaintiffs proved by a preponderance of evidence the amount that the defendants owe to them. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

Judgment creditors have a statutory right to obtain the immediate issuance of a writ of execution unless a motion for an order in aid of judgment is pending. This statutory right is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A judgment-debtor who posts a satisfactory supersedeas bond is entitled to a stay pending appeal as a matter of right. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee's interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee's concern that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A supersedeas bond provides absolute security to the party who is affected by the appeal. It also protects the judgment debtor from levy while the appeal takes its course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503-04 (Yap 2006).

A judgment creditor's primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants must either post an adequate supersedeas bond or pay the money into the court's registry (or a combination of both). A letter of undertaking is insufficient. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (Yap 2006).

When the defendants attempted to obtain an $8.1 million standby letter of credit through the Bank of the FSM, Colonia, Yap, but were unable to because that bank was institutionally unable to handle such a letter of credit for a sum larger than $2.5 million; when the possibility that the other bank in the FSM, the Bank of Guam, might be able to issue such a letter of credit was not explored; and the defendants submitted a surety bond from the Travelers Casualty and Surety Company of Hartford, Connecticut; and when the court issued its order, it was under the impression that a standby letter of credit could be issued through the Bank of the FSM, Yap, and if it had had any hint that such was not possible, the order would have specified a letter of credit through any bank in the FSM and only if that was unavailable would an alternative bond have been considered; the court will approve the Travelers surety bond that the defendants have already obtained and stay execution on the judgment pending appeal and further court order. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 533, 534-35 (Yap 2007).

The purpose of a supersedeas bond is to protect the prevailing party's interest in a trial court judgment pending the appeal. As such, a supersedeas bond provides a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

Unlike U.S. courts, which require the posting of a full supersedeas bond, the Chuuk State Supreme Court may use its discretion as to whether a cash bond must be posted in the full amount of the trial court judgment. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

A $7,000 supersedeas bond, which approximates the amount of economic damages the plaintiffs alleged in their complaint plus, at least in part, security against the plaintiffs' costs, interests and delay damages on the appeal but which is far less than the amount of the judgment they obtained, is sufficient when the plaintiffs have consented to the amount. While there is no direct authority that the parties may consent to a lower bond amount than that reflected in the trial court judgment, the principles applied in the settlement context are instructive. Typically parties are free to waive objections to the amount of a claim and settle at whatever amount they may agree upon. Sisra v. Billimon, 15 FSM R. 266, 268-69 (Chk. S. Ct. Tr. 2007).

A motion to freeze funds will be denied when it would violate the stay against judgment pending the defendant's appeal and would merely duplicate the security given to the plaintiffs by the defendant's posting of a cash bond. Sisra v. Billimon, 15 FSM R. 266, 269 (Chk. S. Ct. Tr. 2007).

The criteria for granting a stay under Rule 62(c) are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. These criteria do not apply to appeals from a money judgment or to the denial of a motion to vacate a money judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

While a supersedeas bond may be required for a stay of a money judgment under Rule 62(d), it is clear that no such bond is required in order to obtain a modification of an injunction pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

The irreparable injury contemplated by Rule 62(c) is that which will make the appeal moot. Thus, prospective monetary damage is not irreparable injury. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137

(Pon. 2008).

Rule 62(d), not 62(c), applies to stays of money judgments and awards. That rule provides that when an appeal is taken the appellant by giving a supersedeas bond may obtain a stay and the bond may be given when the notice of appeal is filed or after. The stay is effective when the court approves supersedeas bond. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee's interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee's concern that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond provides absolute security to the party who is affected by the appeal, but it also protects the judgment-debtor from levy while the appeal takes its course. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond serves three main purposes: 1) it permits the appellant to appeal without risking satisfying the judgment prior to appeal and then being unable to obtain a refund from the appellee after judgment is reversed on appeal; 2) it protects the appellee against risk that the appellant could satisfy the judgment prior to the appeal but is unable to satisfy the judgment after appeal; and 3) it provides a guarantee that the appellee can recover from the appellant the damages caused by the delay incident to the appeal, that is, the bond guarantees that the appellee can recover the interest that accrues on the judgment during appeal, and guarantees that the appellant will satisfy the judgment plus interest and costs if it is affirmed on appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A judgment creditor's primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants may either post an adequate supersedeas bond or pay the money into the court's registry (or a combination of both). If the appellants post a supersedeas bond, they are entitled to stay as of right once the court has approved the bond, but statutory post-judgment interest will continue to accrue until the judgment is paid. If the money is paid into court, interest will cease to accrue on the judgment, and if only a part of the principal is paid, then the statutory interest stops only on that part. Payments into court accrue interest for the ultimate recipient's benefit only as earned in the court's depository institution. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140-41 (Pon. 2008).

Usually, a full supersedeas bond is required in order to stay execution of a judgment, and the amount of the bond is calculated to include the whole amount of the judgment, costs on appeal, interest, and damages for delay, but courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

If the appellants have a history of paying judgments of large size, the court might be able to issue a stay without a bond or equivalent security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

When the appellants' ability to pay is not so plain that a bond would be a waste of money and when the appellants have not shown that a bond would put their other creditors in jeopardy, the judgment-debtor defendants must provide adequate security for the judgment-creditor appellee in order for the court to issue a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

A stay may be denied when the appellant is unable to post a supersedeas bond and has failed to propose alternate security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

It is the appellant's burden to demonstrate objectively that posting a full bond is impossible or impracticable; likewise, it is the appellant's duty to propose a plan that will provide adequate (or as

adequate as possible) security for the appellee. A supersedeas bond is essentially a judgment insurance policy, and the alternate security must serve the same basic purpose. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When the defendants are not entitled to a stay on the terms sought; when they have not posted a supersedeas bond; and when they have not proposed alternative security for all, or any part of, the judgment they seek to appeal for the second time, the court must deny the defendants' motion for a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 143 (Pon. 2008).

The rule requiring a supersedeas bond to be posted before a stay may be granted pending appeal is applicable only to appeals from money judgments. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

– Stay – Criminal Cases

A stay is normally granted only where the court is persuaded as to the probability of ultimate success of the movant. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In determining whether to grant a stay, a single appellate judge, acting alone, must consider whether it is more likely than not that the petitioner would be able to persuade a full appellate panel as to the soundness of his legal position and that there are such special circumstances that the trial court should be mandated to modify its conduct of the trial. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In weighing the possibility of success of an application for a writ of mandamus on grounds that one public defender's conflict should be imputed to all lawyers in the Public Defender's office, when the original disqualification is based upon a conflict of the attorney's loyalties because of his familial relationship with the victim, but no issue of confidentiality is raised, and only the issue of loyalty is present, but no showing is made that the other lawyers could not give full loyalty to the client; there exists no substantial possibility of an appellate court granting the writ and a stay of proceedings pending consideration of the application

should not be granted. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Under FSM Appellate Rule 27(c) a motion for a stay of proceedings pending consideration of a motion for a writ of mandamus to require a trial court to appoint a lawyer other than the Public Defender is denied where there: 1) is no substantial possibility that a full panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented in favor a stay. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 255 (App. 1990).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

When a person convicted of a crime appeals only his jail sentence and seeks a stay of that sentence pending appeal, the trial court will grant a stay only if it is reasonably assured that the appellant will not flee or pose a danger to any other person or to the community, and that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. The burden of establishing these criteria rests with the defendant. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

The request of a defendant, who is appealing only his jail sentence, for a stay pending appeal will be denied because his allegation that his four-month jail sentence for misappropriating to his own use $17,125 of government money is cruel and unusual punishment and an abuse of the judge's discretion when he has diabetes does not raise a substantial question likely to result in a sentence without a jail term and raises the inference that the appeal was brought for the purpose of delay. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

A sentence of imprisonment will be stayed if an appeal is taken to the Chuuk State Supreme Court appellate division and the defendant is released pending disposition of appeal if application for release is made in the first instance in the court appealed from. Iwenong v. Chuuk, 8 FSM R. 550, 551-52 (Chk. S. Ct. App. 1998).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The burden of establishing the requisite criteria rests with the defendant. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

Among the criteria the defendant must show to be released pending appeal when the appeal is only of his sentence of imprisonment is that the appeal is not for the purpose of delay and that it raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

A defendant appealing his sentence has utterly failed to meet the criteria for release pending appeal when neither his moving papers nor argument raised a substantial question of law or fact likely to result in a sentence not including a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

That the defendant would then be free, in mind and body, to assist his counsel in the preparation of his appeal is not a substantial question of law or fact justifying release pending an appeal. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

When an appeal of a criminal sentence does not raise any substantial question likely to obtain the result the appellant seeks, the court may draw the inference that it was brought for the purpose of delay. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

Since an order granting a change of venue is not appealable, no stay is warranted while the defendant seeks its review in the appellate division. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

When, given the appellate cases' unusual posture, the appellate division determines that it is appropriate to apply Appellate Procedure Rule 2, which allows it, for good cause shown, to suspend in a particular case the Appellate Rules' usual requirements and order proceedings in accordance with its direction and when it is within the court's inherent power to ensure the efficient administration of justice, which may be hindered if trial were to start before it ruled on the question presented, it may stay trial in the case below pending further notice. Wainit v. FSM, 11 FSM R. 568, 569 (App. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

There is no good reason to stay the completion of discovery in a criminal case while appellate review is sought when the defendant has already made his discovery request and because the amount of discovery that can be requested in a criminal case is so limited and the government cannot even request discovery unless the defendant has already done so, it is difficult to conceive of any circumstances under which staying discovery in a criminal case would be proper. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

As jeopardy does not attach in a criminal case until the first witness is sworn in to testify at trial, the trial court will therefore not stay pretrial proceedings while the defendant seeks appellate review because rulings on pretrial motions not yet filed may dispose of the case entirely in the defendant's favor. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

The only stay of a pending criminal case while appellate review is sought that the trial court could consider granting would be a stay of trial. For a stay to be granted, the appeal must be meritorious – a substantial likelihood that the applicant will prevail. A stay is normally granted only where the court is persuaded as to the probability of the movant's ultimate success. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

An issue appealed is not meritorious and the method of seeking appellate review is not meritorious solely because it is a matter of first impression for the appellate division. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

In order for a defendant to be granted a stay of a criminal proceeding while he seeks interlocutory appellate review, he must show that his appeal or his petition is meritorious and has a substantial likelihood of success on the merits. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Appellate Rule 9(c) sets the criteria for release pending appeal in a criminal case, and the burden of establishing the requisite criteria rests with the defendant. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community, and then the movant must establish that the appeal is not for purpose of delay and that it raises a substantial question of law or fact likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The release of a prisoner is not automatic once a notice of appeal and a motion for release have been filed. The prisoner must establish the requisite criteria exist under Appellate Rule 9(c). FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court's discretion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The court may, in its discretion, stay pending appeal upon such terms as the court deems proper, an order for restitution, but the court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets. The court may invite the movant and the government to submit their views on the advisability, if restitution is stayed, of an order that while the appeal is pending the restitution be paid into the court's registry to remain there in an interest-bearing account until the appeal is decided. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

An order placing a defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation will commence. If the order is stayed, the court must fix the terms of the stay. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Under Rule 38(a)(4), when a sentence is probation and an appeal is taken, an automatic stay pending appeal remains in effect until a starting date is set for probation to begin. If a motion to stay is filed, the court would not set a starting date until the defendant's motion for a stay was either granted (in which case the terms of that stay order would take effect) or denied (in which case a starting date would be set for probation to begin). Conceivably, the court could set a starting date that came before the court was able to rule on the motion to stay. In such a circumstance, the probation would start and then a stay would be either granted or denied. FSM v. Fritz, 13 FSM R. 88, 91-92 (Chk. 2004).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. It permits the court to release a person who has been convicted of an offense and has filed an appeal only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. FSM v. Wainit, 14 FSM R. 164, 167 (Chk. 2006).

Once the court has determined that adequate and proper release conditions can be set, it must then make a two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

A defendant's potential health problems and needs are not relevant to a motion for stay of execution of sentence. They are appropriately raised in a Rule 35(b) motion for reduction of sentence. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

That the trial transcript might reveal issues is a ground far too speculative for the court to conclude that a defendant has met Rule 9(c)'s requirement that there be a substantial issue of law or fact for a stay pending appeal. The court cannot presume that an issue of which counsel is currently unaware will be revealed by a review of a completed transcript and that, if revealed, it will be a substantial issue. FSM v.

Wainit, 14 FSM R. 164, 168 (Chk. 2006).

When the offenses being charged, the charges tried, and the resulting conviction involved only the national election and candidates, and not the state election, whether the national government can prosecute a violation of rights in a state election is not a possible, let alone a substantial, issue on an appeal of the conviction. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

If by raising an issue about the state election the appellant means that evidence relevant to the national election charges could not be introduced if it also referred to the candidates and campaigns for the simultaneous state election, this, without more, is not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

That the evidence presented in a prosecution for interfering in a national election, might also have sustained a state court conviction on state law charges (if one had been brought) arising from the simultaneous state election, is irrelevant and thus not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot's candidates, the question of who are the Government of Udot's candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Considering the high hurdle that a criminal appellant must overcome to prevail on an insufficiency of the evidence challenge, it would take much more than the mere assertion that this is possible issue on appeal for a court to consider this a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Merely being an issue of first impression before the appellate division does not automatically make it a nonfrivolous issue, and just because an issue being brought before the appellate division is one of first impression for that division, does not make it a substantial issue entitling a defendant to a stay. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

An assertion that a constitutional issue is presented as to whether the FSM can, in its laws, "define who is a public officer, when it is a function expressly reserved to the state government," mischaracterizes the court's holding that national laws are often applied to persons based on their status, even when that status is defined solely by another government (not that the FSM can, in its laws, define who is a public officer under state law), is frivolous. To assert that the national government cannot apply its laws based upon a person's status as defined by some other body is also frivolous. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

A contention that the meaning of the term "public officer," which was not defined in the FSM Code, cannot be its common and approved English usage (the required construction under the FSM Code) but a meaning that comports with different, defined terms, is not a substantial issue. Also meritless is a passing reference that new legislation, which does not include the term "public officer," somehow redefines or clarifies the term "public officer" to create an issue as to the meaning of "public officer." FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay. It is quality, not quantity, that creates a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

When, pursuant to Appellate Procedure Rule 9(b), an appellant first filed a motion with the trial court for release while an appeal is pending and the trial court denied the motion and set out in detail the reasons for the denial in its order, a motion for release may thereafter be made to the Supreme Court appellate division

or to a justice thereof. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9(c) lists the criteria that the court should use to determine whether to grant a motion for release pending appeal The appellant must establish 1) that he will not flee or pose a danger to any other person or to the community and 2) that his appeal is not for the purpose of delay, and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time already served. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9 provides no explicit standard of review for a motion made to the appellate court for release pending appeal. Rule 9(b) contemplates the appellate court making an independent determination on whether post-conviction release should be granted and clearly contemplates the appellate court giving some weight to the trial court's findings as the appellate court is required to consider its statement of reasons for the denial. The court's determination should give great deference to the trial court's statement of reasons for denial, as that court is in the best position to evaluate the appellant's legal arguments at least until the appeal has been briefed. Wainit v. FSM, 14 FSM R. 193, 194-95 (App. 2006).

When an appellate rule has not been construed by the FSM Supreme Court and the rule's language is the same or substantially similar to its United States counterpart, the court may look to U.S. courts for guidance. Wainit v. FSM, 14 FSM R. 193, 195 n.1 (App. 2006).

When the appellant has not raised any arguments in his motion for release that counter the trial court's findings or undermines its reasoning relied on in denying the motion for release, the appellate court will find that the appellant has not established that his appeal raises a substantial question of law or fact and will deny it and adopt as its own the trial court's well-reasoned decision. Wainit v. FSM, 14 FSM R. 193, 195 (App. 2006).

Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court's discretion. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Rule 9(c) permits the court to release persons who have been convicted of an offense and have filed appeals only if the court believes that one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community, and if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person shall be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

If the court determines that adequate and proper release conditions can be set, it must then make a two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

That a pretrial motion to dismiss succeeded in eliminating one count and a motion to acquit on the other

count was unsuccessful – is too vague an issue to show a substantial or close question. Exactly what issue(s) an appellant intends to raise under this ground is unclear. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

As summarized in a well-known adage – ignorance of the law is no excuse. Nor is it a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

The standard of review that an appellate court must apply in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence. In reaching this conclusion, the appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations and most favorable to the inferences the trial court drew from the evidence. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

A mere assertion that an appellate panel might view the evidence from different angles does not show a close or substantial question. It ignores the standard that the appellate court must use in its review and the difficulty an appellant has in prevailing on an insufficiency of the evidence claim. FSM v. Petewon, 14 FSM R. 320, 325-26 (Chk. 2006).

Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense) must be raised prior to trial. Any deficiency in the information not raised before trial has been waived and therefore cannot be a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

Deficiencies in the presentation of evidence is a claim of insufficiency of the evidence. In light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, without more, cannot consider this to be a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A question whether the verdict is based on sufficient evidence and is consistent with the evidence as presented and the charges as filed is too vague for the court to consider it a substantial or close question, and it raises an insufficiency of the evidence claim. The mere assertion that the evidence was insufficient, in light of the appellate court's standard of review, does not present a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

When there was evidence that an appellant was part of a conspiracy, an assertion that his mere knowledge of a conspiracy is not enough to implicate him in the conspiracy, does not present a substantial or close question. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

There are cases where the voluntariness of a defendant's statement and whether he knowingly and intelligently waived his right to silence present a close or substantial question, but when the appellant merely lists the denial of his suppression motion as a ground for appeal and does not state why it is an appealable issue or why that denial was in error, the ground will not support a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

When no evidence was ever presented that a defendant made any effort, let alone a reasonable effort to prevent the conduct or result which is the object of the conspiracy, he cannot claim that the withdrawal or renunciation defense presents a substantial question since he did not present any evidence that might show that he could meet the defense's statutory requirements. FSM v. Petewon, 14 FSM R. 320, 327

(Chk. 2006).

That the time an appellant expects the appeal to take deprives him of his right to appeal is a meritless ground for a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Rule 38(a). Rule 38(a)(2) provides that a defendant who has been sentenced to imprisonment and who has appealed shall be released pursuant to Appellate Procedure Rule 9(b) and Appellate Rule 9(c) sets out the criteria for release under Appellate Rule 9(b). FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A criminal defendant's motion for a stay of imprisonment pending appeal is governed by Criminal Rule 38(a)(2) and Appellate Rule 9(b) and the criteria to be used are as set out in Appellate Rule 9(c), which provides that if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person will be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court's sound discretion. The appeal must raise a substantial question of law or fact likely to result in a reversal; or an order for a new trial; or a sentence that does not include a term of imprisonment; or a sentence reduced to a jail term less than the total of the time already served. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

Since an appellate court's standard in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence and since the appellate court's obligation is to review the evidence in the light most favorable to the trial court's factual determinations and most favorable to the inferences the trial court drew from the evidence, in light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, after having carefully reviewed the

arguments and the extensive evidence, cannot consider insufficiency of the evidence claims to be a close or substantial questions. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A claim that the statute of limitations has run that is raised as an insufficiency of the evidence claim – based on a contention that there is no evidence that any overt acts to further the conspiracy were committed within the statute of limitations applicable to the appellant because the appellant explains away all acts within the three years before the information was filed as totally innocent acts or acts to commit some other underlying offense – is not a close or substantial question because an overt act in the furtherance of a conspiracy may be in itself a totally innocent act, and not a crime at all. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A criminal defendant's claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction's collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant's request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since, under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed will be released pursuant to Appellate Procedure Rule 9(b) and since, by contrast, Criminal Rule 46(c) applies to requests for release when a defendant has been found guilty but has not yet been sentenced, when a motion for stay of execution was ruled on after sentencing, the court will treat it as a request pursuant to Criminal Rule 38(a)(2), and not one under Rule 46(c). Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

Under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed may seek release under Appellate Procedure Rule 9(b). After the filing of a notice of appeal and a motion to stay, the defendant's release is not automatic but within the court's discretion, and the burden is on the defendant to establish the criteria for release. Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

The burden to meet the criteria for release is on the defendant. Such criteria include the burden to establish that the defendant will not flee or pose a danger to others in the community. These and other criteria were intended to be set forth by statute but since there is no such statute, the Chuuk State Supreme Court will adopt the criteria provided for under FSM Appellate Rule 9(c) to the extent consistent with the apparent intent of Chuuk Appellate Rule 9(c). Chuuk v. Inek, 17 FSM R. 137, 142-43 (Chk. S. Ct. Tr. 2010).

The trial court will grant a stay only if the appellant meets his burden to reasonably assure the court through his written and oral presentations that he will not flee or pose a danger to any other person or to the community and that his appeal is not for purpose of delay, and if he raises a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. If a substantial question of law or fact is raised, the defendant must also show that the issue raised is likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr.

2010).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay since it is quality, not quantity, that creates a substantial or close issue. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

If an issue raised for appeal is too vague to clearly show a substantial or close question for appeal, the motion to stay will be denied. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant has met his burden to show that he will not flee or pose a danger to any other person or to the community, the defendant must, in order for the court to grant a stay, also raise a substantial question of law or fact that will result in either a reversal, an order for a new trial, a sentence without imprisonment, or a sentence reduced to a term of imprisonment less than time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks a stay and raises for appeal that the time of the alleged offense was not specific enough to inform him of the charge and the defendant raised that argument regarding the sufficiency of the information in his pre-trial motions, so preserving the issue for appeal, and when the court already denied the pre-trial motion on this issue and the defendant has not provided any additional authority to show a close issue, the defendant has failed to meet his burden to show a substantial issue of fact or law upon which he will prevail on appeal. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks to challenge the court's finding of when the offense occurred, based on the inconsistent dates in the police report and the information, he is challenging the sufficiency of the evidence to prove the charge. A defendant faces a high hurdle when challenging the sufficiency of the evidence. For the challenge to be considered a close or substantial issue for appeal entitling the defendant to a stay, he must, in light of the trial judge's role of weighing the evidence, come forth with more than mere assertions of inconsistencies in the evidence especially when he faces the additional hurdle that he is now using as a basis for his contention of inconsistencies in the record, evidence that was not and which the defendant did not seek to introduce into the record. Chuuk v. Inek, 17 FSM R. 137, 143-44 (Chk. S. Ct. Tr. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant's availability would have been immaterial for the purposes of ruling on the report's admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A defendant's contention that as a result of the police report containing an inconsistent date of the offense, he was misled as to when the alleged offense took place, borders on the spurious because the information is the charging document that informs the defendant of the charge he is called upon to defend against and a police report that was not mentioned in the affidavit of probable cause and which no one sought to admit into evidence has no bearing on whether the defendant was sufficiently informed of the allegations. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A mere inconsistency between the allegations contained in the information and a document that the defendant did not seek to admit into evidence does not provide the court with a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of

either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

Where the court addressed the defendant's motions before trial and ruled that the issues raised were subject to proof at trial and where, at the conclusion of trial, the court denied the motion and made its findings on the record, the defendant does not raise a substantial issue of fact or law when he cannot state how the court's deferred ruling adversely affected his right to appeal or how the ruling otherwise violated Criminal Rule 12(e). Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

No substantial issue of law or fact is raised when the defendant argues that the government failed to file a written response to his second motion to dismiss and therefore it should have been granted since the court has the discretion to allow argument without the filing of a brief and since the court will not grant an unopposed motion unless there are otherwise good grounds to grant it. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

The relevant subsections of Chuuk State Law No. 190-08, § 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, § 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

In criminal matters where a judgment of conviction imposes a sentence of imprisonment, the controlling rules for a stay are Chuuk Criminal Procedure Rule 38(a)(2) and Chuuk Appellate Rule 9 (b)-(c). An order issued pursuant to these rules would constitute one in aid of appeal. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community.

Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

Chuuk Appellate Rule 9(b) makes no provision for reconsideration of a decision on a motion to stay made by the court appealed from in the first instance and specifically provides for the appellate division's review of such a determination. Were the trial court to consider a defendant's second motion as one made pursuant to Chuuk Criminal Rule 38(a)(2), it would do so in contravention of the Appellate Rules of Procedure. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

When a defendant has been convicted of a crime and that conviction still stands; when his sentence for the conviction, though stayed pending appeal, also remains intact; and when his release pending appeal is subject to conditions, to view him as a "free man with all his rights intact," as he now weathers the consequences of being a convicted criminal, is to take flight into fantasy. The stay of his sentence does not also serve to exonerate him. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

If the court were authorized to rule on a defendant's motion to release his passport while his conviction is on appeal, it would be hard pressed to see how he is less likely to flee the jurisdiction now than when the conditions of his release were first imposed since the weight of the evidence adduced at trial has demonstrated his guilt beyond reasonable doubt and since now he faces re-instatement of a six-month term of imprisonment. Chuuk v. Billimon, 17 FSM R. 313, 318 (Chk. S. Ct. Tr. 2010).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

A stay is mandatory only if the defendant is released pending appeal because a sentence of imprisonment must be stayed if an appeal is taken and the defendant is released pending disposition of appeal. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

Rule 38(a)(2) does not make a release pending appeal mandatory because the word "and" requires that both conditions – a pending appeal and a release – exist before a stay must be granted. If an appellant is not released pending appeal, the rule does not entitle him to a stay. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the appellant is not released and there is no stay the appellant then gets credit for time served while the appeal is pending. If the sentence were stayed but the defendant remained in jail, he would not get credit for time served, which would be inherently unfair. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the court appealed from refuses to release a criminal defendant pending appeal, or imposes conditions of release, that court must state orally on the record or in writing the reasons for the action taken, and must do so in all future cases. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

ARBITRATION

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

The filing of a lawsuit constitutes a party's waiver of arbitration only if that party substantially invokes the litigation machinery and the other party is prejudiced as a result. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

Compelling arbitration will not subject either party to duplicative litigation of the issues in dispute when the plaintiff did not substantially invoke the litigation machinery and there was no prejudice to the defendant from the filing of the court case because the plaintiff's initial complaint was dismissed for failure to comply with the statute of limitations for contract actions, because the defendant never answered the complaint, but merely filed a motion to dismiss; and because the court never addressed any of the substantive issues.

E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407-08 (Pon. 2001).

The prevailing modern view of arbitration is that, even in the absence of a statute, courts generally favor arbitration, and every reasonable presumption will be indulged to uphold arbitration proceedings. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Agreements to arbitrate need not even be in any particular form, as long as the parties have agreed to do so by clear language, and it appears that the intent of the parties was to submit their dispute to arbitrators and be bound by the arbitrators' decision. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Requiring parties to resolve their disputes outside of court does not replace the judiciary's role in resolving disputes; it complements judicial proceedings by allowing the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. When a contract's clear language evidences the parties' intent to submit disputes to arbitration, the court will hold them to their agreement and specifically enforce the contract's arbitration provisions. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408 (Pon. 2001).

Non-judicial settlement of disputes is entirely consistent with Micronesian customs and traditions, whether it be by arbitration or some other form of alternative dispute resolution. Beyond customary considerations, international commercial disputes may best be resolved by private individuals, selected by the parties, who are knowledgeable in the trade and industry in which the commercial enterprises operate. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 408-09 (Pon. 2001).

The FSM Supreme Court adopts the modern view of common law of arbitration and specifically enforces the parties' contract to arbitrate. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 409 (Pon. 2001).

The touchstone for determining whether the right to arbitrate has been waived by litigation conduct is prejudice to the non-moving party. A non-exclusive list of factors relevant to the prejudice inquiry is: 1) timeliness of a motion to arbitrate; 2) the degree to which the party seeking to compel arbitration has contested the merits of its opponent's claim; 3) the extent of the moving party's non-merits motion practice; 4) its assent to the trial court's pretrial orders; and 5) the extent to which both parties have engaged in discovery. Harden v. Inek, 18 FSM R. 551, 552 (Pon. 2013).

While delay alone is not sufficient to establish prejudice, a delay of more than two years far exceeds the delay involved when courts have found no waiver of the right to compel arbitration, and also of great significance is that the parties had previously expected the matter to be resolved at trial but the judge previously assigned to the case recused herself only one day before trial was to start, all of which, combined with the parties' compliance with pretrial orders, demonstrates conclusively that the parties had consented to a judicial determination of the dispute. Harden v. Inek, 18 FSM R. 551, 552-53 (Pon. 2013).

A plaintiff would suffer prejudice if compelled to engage in duplicative litigation efforts in an arbitral forum because when a party fails to demand arbitration during pretrial proceedings, and, in the meantime, engages in pretrial activity inconsistent with an intent to arbitrate, the party later opposing arbitration may more easily show that its position has been prejudiced, since it can readily be inferred that the party claiming waiver has already invested considerable time and expense in litigating the case in court and would be required to duplicate its efforts, at least to some degree, if the case were to proceed in the arbitral forum. Prejudice of this sort is not mitigated by the absence of substantive prejudice to the party's legal position. Harden v. Inek, 18 FSM R. 551, 553 (Pon. 2013).

The FSM Supreme Court generally encourages parties to voluntarily agree to resolve their disputes through alternative means such as arbitration and will specifically enforce the parties' contract to arbitrate. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

There are no FSM statutes governing arbitration, therefore only common law arbitration exists here. Nevertheless, when a contract clearly shows the parties' intent to submit disputes to arbitration, the court will allow and encourage the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. The court will hold the parties to their agreement and specifically enforce the arbitration provisions in the contract. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657-58 (Pon. 2013).

In the absence of a statute requiring it, the specific enforcement of the arbitration clause does not mandate that litigation be dismissed before the arbitration can proceed. Generally, judicial proceedings will instead be stayed pending the arbitration. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

In the absence of a statute requiring dismissal and in the interests of judicial economy and of lessening the parties' financial burden, the best way to specifically enforce the arbitration clause's intent is not to dismiss the case in the hope that a foreign arbitration will proceed smoothly and not require further judicial enforcement. The best way to specifically enforce the arbitration clause is to stay the judicial proceedings and maintain the status quo while the parties go through arbitration. A preliminary injunction will therefore remain in effect and the case will remain open while the arbitration proceeds. Once an arbitration decision is rendered, the court can then enforce that decision as a judgment or final order of this court and take such further steps as may be necessary and appropriate to conclude this litigation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

A stay of judicial proceedings while the parties arbitrate is meant solely as an aid to the mandatory and binding arbitration, leaving the parties confident that the result will be quickly and easily enforceable here if needed, with the rest of the case proceeding or being dismissed as need be. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 658 (Pon. 2013).

Even in the absence of a statute, courts generally favor arbitration and every reasonable presumption will be held to uphold arbitration proceedings. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

When the applicable regulations require that any public contracts awarded under those regulations are subject to mandatory alternative dispute methods; when the movants have filed a complaint and thereby "invoked the litigation machinery"; when the parties availed themselves of an alternative dispute method by virtue of a mediation session but the settlement agreement thus reached was unenforceable because it did not receive the required Presidential approval; and when the government is not disposed to resume alternative dispute resolution, the plaintiff's motion to compel arbitration will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224-25 (Pon. 2015).

ATTACHMENT AND EXECUTION

The statutes concerning writs of execution protect certain property of the debtor from execution, but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 285 (Pon. 1986).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to

sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 285 (Pon. 1986).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where it becomes apparent that claims or creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-right rule according to the dates of the individual parties' writs. In re Island Hardware, Inc., 5 FSM R. 170, 173 (App. 1991).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM R. 592, 593 (Pon. 1994).

A writ of attachment is a process by which property is seized and held to satisfy an established debt or prospective judgment and may only issue against the property of a defendant debtor. The property of a third party, to which the debtor has no possessory rights, may not be seized, held, and eventually sold to satisfy the obligations of the debtor. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM R. 37, 38 (Pon. 1995).

That a defendant debtor is a shareholder of a corporation that might receive a favorable settlement in the future and might pay a dividend to its shareholders does not entitle creditors to attach that corporation's assets. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM R. 37, 39 (Pon. 1995).

A writ of execution may issue without seriously exploring other possible means of satisfying the

judgment. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Execution may be had against a judgment debtor's non-exempt personal property, not against his interests in land. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Property may not be taken by the government, even in aid of a judgment, without due process of law. In executing the writ, due process of law may be assured by directing the executing officer to comply strictly with the statutory provisions for levying a writ of execution. House of Travel v. Neth, 7 FSM R. 228, 229-30 (Pon. 1995).

The right to prejudgment seizure must exist by the law of the state in which the action is pending. In the absence of state law, no remedy is available under Rule 64. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Under Pohnpei law a court may issue writs of attachment, for special cause shown, supported by a statement under oath. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Attachment is an extraordinary, prejudgment remedy, which is purely ancillary to the main suit, has nothing to do with the merits, and is a summary, anticipatory method of impounding defendant's assets to facilitate collection of the judgment against him, if and when one is obtained. Attachment did not exist at common law, and is created by statute. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

Under Pohnpei law attachment appears to be available in any suit for collection of money, but not available in judgments affecting land, and the statute requires only that "special cause" be shown for the issuance of a writ of attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

The existence of a sale of some of a debtor's assets is not special cause sufficient to grant a request for attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM R. 208, 210 (Chk. 1997).

Process to enforce payment of a money judgment is by writ of execution, in accordance with the practice and procedure of the state in which the court is held, except that an FSM statute governs to the extent it is applicable. Louis v. Kutta, 8 FSM R. 208, 210-11 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

A writ of execution issued in violation of statute, against the property of a non-party in a case for which

no judgment has been issued and in which the judge should have recused himself is a wrongfully-issued writ. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM R. 312, 314 n.1 (Chk. 1998).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Although under FSM law once an application for an order in aid of judgment has been filed no writ of execution may issue except under an order in aid of judgment or by special order of the court, it is uncertain what effect, if any, this (or the Chuuk state law prohibiting attachment, execution, or garnishment of Chuuk public property) would have on courts in jurisdictions outside the Federated States of Micronesia. Walter v. Chuuk, 10 FSM R. 312, 317 (Chk. 2001).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When a bank's chattel mortgage purchase money liens are not enforceable against third parties who have had no notice of them and are therefore not enforceable against and do not have priority over an execution lien, even if the bank were permitted to intervene, it could not prevail. Since that is so, the bank does not have an interest in the litigation that would be impaired if it were not allowed to intervene and therefore does not satisfy the elements required to intervene of right. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365-66 (Chk. 2003).

A judgment holder is entitled to a writ of execution. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

The current practice that where a judgment creditor who holds a national court judgment wants national police officers to execute on the judgment, he must bear the transportation and per diem costs of bringing national police personnel to Yap to execute on the writ since Yap has no resident national law enforcement officer. While this involves substantial up-front costs to the judgment creditor, those costs are recoverable from the judgment debtor under 6 F.S.M.C. 1408. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

The court is reluctant to opine on 6 F.S.M.C. 1408's constitutionality when the judgment creditor has an enforcement remedy, if not an ideal one, notwithstanding any constitutional adjudication which this court might render on the division of powers issue that Yap raised regarding a writ of execution directed to the Yap chief of police. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When the judgment creditor has made the necessary arrangements through the FSM Department of Justice to bring national police officers to Yap, he should so advise the court which will then issue the writ of execution designating the appropriate individuals. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453-54 (Yap 2003).

Among judgment creditors, those with a writ of execution have priority over those who do not. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

One reason writ-holders are granted a higher priority is that the judgment creditor who has taken the effort and exhibited the diligence to move to the status of execution creditor deserves to be treated differently on that basis. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

A judgment-creditor's right to the issuance of a writ of execution is provided for by statute, as is the right to obtain an order in aid of judgment. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

By statute, a party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

The court's procedural rules stay a writ of execution's issuance until ten days after entry of judgment. The purpose behind this automatic ten-day stay is to permit a judgment-debtor to determine what course of action to follow. In re Engichy, 11 FSM R. 520, 527 (Chk. 2003).

Because of the automatic ten-day stay on the issuance of a writ of execution, a money judgment, upon entry of judgment, is final for the purposes of appeal, even though it is not yet final for the purposes of execution. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

An FSM judgment-debtor can, if he so chooses, prevent the issuance of a writ of execution because any party, either the judgment-creditor or the judgment-debtor may apply for an order in aid of judgment and once a party has applied for an order in aid of judgment, the judgment-creditor is statutorily barred from obtaining a writ of execution except as part of an order in aid of judgment or by special order of the court for cause shown. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

A judgment-creditor's statutory right to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to the dates of each party's writ. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM R. 520, 528-29 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Any judgment-creditor with a writ of execution may elect not to use it, and try some other method to satisfy its judgment. In re Engichy, 11 FSM R. 520, 532 (Chk. 2003).

An execution sale does not require judicial confirmation or allow claims of other creditors. In re

Engichy, 11 FSM R. 520, 532 (Chk. 2003).

An execution creditor who has levied on its writ may, with the debtors' consent, postpone the execution sale. In re Engichy, 11 FSM R. 520, 532 (Chk. 2003).

Courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. This statutory prohibition has been held to prohibit the issuance of an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

Any party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution anytime after ten days after the entry of judgment, and a writ of execution, if levied upon, requires immediate payment of the judgment in full. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

An order in aid of judgment, unlike a writ of execution, may only be obtained after application and notice to the other party and a hearing instead of the prompt issuance possible for a writ of execution. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

A judgment-creditor (or its attorney) must evaluate which method (writ of execution or order in aid of judgment) is most likely to best satisfy its judgment unless the judgment-debtor has already foreclosed that choice by applying for an order in aid of judgment. In re Engichy, 12 FSM R. 58, 66-67 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

Rule 69, which governs procedure on execution, is meant to benefit a judgment creditor, not a judgment debtor. It was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for the securing of information relating to the judgment-debtor's assets. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

Judgment creditors have a statutory right to obtain the immediate issuance of a writ of execution unless a motion for an order in aid of judgment is pending. This statutory right is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A supersedeas bond provides absolute security to the party who is affected by the appeal. It also protects the judgment debtor from levy while the appeal takes its course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503-04 (Yap 2006).

Generally, state property cannot be attached, executed upon, or garnished. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

The trial court will not extend the right to a writ of garnishment against the state beyond that affirmed by the appellate division in Chuuk v. Davis and will therefore deny a judgment-creditor's request to seize local revenues by the only means logical, a writ of garnishment directed to the FSM national government, when his damages are strictly economic in nature. The suggested alternative, a more drastic step of an order seizing and auctioning the state legislative officers' new vehicles will also be denied. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to a governmental body, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

Judgments can be enforced in any manner known to American common law or common in American courts. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

A trial court's decision to enter or not enter a writ of execution or garnishment is discretionary. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Although a compelling state interest exists in protecting the state from garnishment and execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

None of the FSM Code statutory exemptions to garnishment and execution provide an exception to execution or garnishment when the debtor is a state government. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Requests for writs of execution or garnishment demand consideration of many factors, including the nature of the judgment, whether or not the debtor has acted in good or bad faith in its attempts to satisfy the judgment, the length of time the judgment has gone unsatisfied, etc. These factors are best weighed by the trial court. Barrett v. Chuuk, 16 FSM R. 229, 235 (App. 2009).

Under the FSM national law regarding enforcement of judgments, the exemption for necessities for trade or occupation is defined as tools, implements, utensils, two work animals, and equipment necessary to enable the person to carry on his usual occupation. By a plain reading of the statute's language, a rental house, and by extension, the land on which it stands, is not such a necessity. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323 (Kos. 2011).

A writ of execution levied on an account in the Bank of Guam, Pohnpei branch, was directed toward funds held in a local bank, authorized to conduct banking transactions under FSM law, and did not assign, garnish, attach, execute, or levy on U.S. Social Security or military retirement benefits, but executed on funds on deposit in the FSM. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

Under a writ of execution's terms and the applicable law, a return is required. The funds executed upon must be accounted for and credited toward the judgment. Saimon v. Wainit, 18 FSM R. 211, 213 (Chk. 2012).

When a judgment-creditor has requested a writ and no motion for an order in aid of judgment is pending, he is entitled to a writ of execution against the judgment-debtor's non-exempt personal property. Personal property is property other than land or interests in land. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Interests in land are not subject to a writ of execution, but any interest in land owned solely by a judgment debtor, in his own right, may be ordered sold or transferred under an order in aid of judgment if the court making the order deems that justice so requires and finds as a fact that after the sale or transfer, the debtor will have sufficient land remaining to support himself and those persons directly dependent on him according to recognized local custom and FSM law. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Since homes and lands are not personal property, a writ of execution cannot be used to force their sale or rental to satisfy a judgment. A judgment-creditor must proceed through an order in aid of judgment to reach such assets. An evidentiary hearing under 6 F.S.M.C. 1410(1) is a necessary step of that process. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Execution may be had against a judgment debtor's non-exempt personal property, but not against his interests in land. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

Since property may not be taken by the government, even in aid of a judgment, without due process of law, due process of law in executing the writ may be assured by directing the executing officer to strictly comply with the statutory provisions for levying a writ of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The court cannot issue a writ of execution to seize a non-party's assets. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

If a judgment creditor seeks to attach and sell any land personally owned by a judgment debtor in his own right, the judgment creditor must seek an order in aid of judgment and at the 6 F.S.M.C. 1410(1) order in aid of judgment hearing must produce sufficient evidence that the court can deem that justice so requires and can find as a fact that after the sale, the judgment debtor will have sufficient land remaining to support himself and any those persons directly dependent on him. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

The Chuuk State Judiciary Act gives each Chuuk court the power to issue all writs for equitable an legal relief; except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder's right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

The purpose of an order-in-aid-of-judgment hearing is for the trial court to examine the question of the judgment debtor's ability to pay and determine the fastest way in which the judgment debtor can reasonably satisfy the judgment. A writ of execution (or garnishment or attachment) can issue as part of an order in aid of judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

The execution statute, 6 F.S.M.C. 1407, requires issuance of a writ of execution upon request, subject to the Rule 62(a) limitation that no execution shall issue upon a judgment until the expiration of 10 days after the entry of that judgment. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 277 (Pon. 2015).

When the issuance of a writ of execution was not only based on statutory law, but the court had also afforded the judgment debtor and her counsel ample time to confer and respond to the motion for a writ of execution, the issuance of the writ was appropriate. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment-creditor from acting to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Notwithstanding a notice of appeal's general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment's validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment, execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

Under Rule 69, the judgment creditor, in aid of the judgment or execution, may obtain discovery from any person, including the judgment debtor. Rule 69 was intended to establish an effective and efficient means of securing the execution of judgments. As part of the process, it provides for securing information relating to the judgment-debtor's assets. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594-95 (Pon. 2016).

– Garnishment

Although there is no provision for garnishment in Pohnpei state law nor any national statute explicitly providing for garnishment, garnishment of wages is an acceptable means for enforcing an unpaid judgment,

pursuant to the FSM Supreme Court's statutory "general powers," its power to enforce judgments in any manner common in courts in the United States, and its power to issue writs of attachment. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

Although technically attachment and garnishment are distinct processes, attachment applying to assets in the defendant's possession and garnishment involving assets in the possession of a third party, the statutory language regarding attachment would seem to apply to both cases. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

The requirements and procedures for issuing a writ of garnishment should be the same as those applied to attachment proceedings. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

The FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. Bank of Guam v. Elwise, 4 FSM R. 150, 152 (Pon. 1989).

Where garnishment is warranted, then anything beyond what is reasonably necessary for the defendant to support himself and his dependents can be garnished. Bank of Guam v. Elwise, 4 FSM R. 150, 153 (Pon. 1989).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM R. 312, 314 n.1 (Chk. 1998).

Garnishment exists as a remedy available in the FSM to a judgment creditor. Louis v. Kutta, 8 FSM R. 312, 319 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial action. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

Hypothetical administrative difficulties do not justify holding that garnishment does not apply to the national government. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

FSM Civil Rule 69 expressly authorizes the court to issue process other than a writ of execution in the course of enforcing a judgment. Louis v. Kutta, 8 FSM R. 312, 322 (Chk. 1998).

The provision that money judgments against the FSM shall be paid from funds appropriated by Congress is not implicated when the FSM is a mere garnishee because garnishment is directed toward the property of the judgment debtor held by the FSM, not toward property of the FSM itself. Louis v. Kutta, 8 FSM R. 312, 322 (Chk. 1998).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM R. 460, 461 (Chk. 1998).

There is no persuasive authority that should a garnishee pay a judgment pursuant to a garnishment order, that the garnishee would waive its rights to appeal. Louis v. Kutta, 8 FSM R. 460, 462 (Chk. 1998).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of

attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM R. 496, 497 (Chk. S. Ct. Tr. 1999).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

A writ of garnishment is the equivalent of a writ of execution in terms of the end sought, which is satisfaction of the judgment. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

In the event that judgment creditors wish to execute on any bank accounts or other debts owed to the judgment debtor, they should present the court with a form of writ of garnishment directed to the garnishee debt-holder, which will specify that 1) upon receipt of the writ, the garnishee will freeze payment of all accounts, debts, or other money owed to the judgment debtor pending further order of court; and 2) that within three days of the writ's service, the garnishee will file with the court a response showing what debts it owes to the judgment debtor. Upon review of the response, the court will then issue a turnover order if appropriate, after determining any competing claims that the garnishee may have to those accounts. Amayo v. MJ Co., 10 FSM R. 433, 435-36 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

By statute, the national government is not subject to writ of garnishment or other judicial process to apply funds or other assets owed by it to a state to satisfy a state's obligation to a third person. Estate of Mori v. Chuuk, 11 FSM R. 535, 540-41 (Chk. 2003).

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).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

When the drawdown amounts that Chuuk receives from the FSM national government are greater by more than an order of magnitude than the judgment amount remaining and when, looking to the case's more than six and a half year post-judgment history, the anti-garnishment statute deprives the judgment creditor of the only reasonably expeditious means of obtaining satisfaction of her judgment. Thus the fastest manner in which the debtor can reasonably pay the judgment under 6 F.S.M.C. 1409 is by an order of garnishment directed to the national government. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Pon. 2003).

When writs of garnishment that formally designated the FSM as a "garnishee/defendant" were entered before the notices of appeal, the FSM was already a party and its motion to intervene is therefore moot. Estate of Mori v. Chuuk, 12 FSM R. 3, 8 (Chk. 2003).

The finding of unconstitutionality of 6 F.S.M.C. 707 (the anti-garnishment statute) applies only to the facts of cases which involve judgments based on violation of constitutional rights guaranteed under the FSM Constitution's Declaration of Rights, and for which a cause of action is expressly conferred by national civil rights statute. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

A garnishment order directs the garnishee, which is the person or entity holding money for the benefit of the judgment creditor, to pay sufficient money to the judgment creditor to discharge the judgment. Before this can occur, the garnishee must determine if and how much money it holds for the judgment debtor, and then pay the judgment amount. This will involve administrative steps by the garnishee. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

In a garnishment matter, a significant administrative burden would be offset by the substantially greater weight of the fundamental human rights guaranteed by the FSM's Constitution's Declaration of Rights. In such a case, a mere administrative burden may not be interposed as an obstacle to the vindication of those rights. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

A garnishment order will not circumvent any state plan to pay judgments when there has been no plan although legislation had required that one be developed. Estate of Mori v. Chuuk, 12 FSM R. 3, 10 (Chk. 2003).

When writs of garnishment are left in place which require the FSM to pay the judgments and attorney's fees awards, the FSM may pay the judgments under protest and still preserve its grounds for appeal. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (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).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any . . . manner known to American common law or common in courts in the United States." FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 61 (Kos. 2004).

At common law, garnishment did not exist as a remedy where the judgment debtor was a municipality because it is generally held that the funds or credits of a municipality or other public body exercising

governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by garnishment served upon the debtor or depository of the municipality. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government where the underlying cause of action is based on a violation of the national civil rights statute. The rationale for those writs was the Supremacy Article of the FSM Constitution, which must control regardless of a state constitutional provision, or national law, to the contrary. It has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment directed toward the assets of a municipality will be denied. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM R. 178, 186 (App. 2005).

When, only after repeated attempts to satisfy those judgments by less drastic measures, writs of garnishment were issued in a civil rights case after over six and a half years had elapsed since judgment and in another civil rights case, in which a writ of garnishment was issued at the same time, after over two years since judgment, but when in the present case, it has only been about four months since the first payment on the consent judgment was due, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and given further opportunity to meet its obligation in some other manner before the plaintiffs can resort to a writ of garnishment. Tipingeni v. Chuuk, 14 FSM R. 539, 543 (Chk. 2007).

A statute is unconstitutional to the extent that it prohibits garnishment of state funds to satisfy a civil rights judgment, including civil rights judgments involving purely economic damages as well as those involving physical injury damages. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Since the trial court can, on application, endeavor to find a workable way in which to eventually pay the judgment as quickly as reasonably possible and issue writs for less than the full judgment amount, the court will issue a writ of garnishment for compensation for the taking of the plaintiff's retained property during two years, and if no further payments are made on the judgment within the next six months, the plaintiff may then apply for another writ of garnishment. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

The FSM Supreme Court's power to issue writs of garnishments is based in 6 F.S.M.C. 1404 and supported by case authority. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

A garnishment order directs the garnishee, which is the person or entity holding money for the judgment debtor's benefit, to pay sufficient money to the judgment creditor to discharge the judgment. The garnishee must determine if and how much money it holds for the judgment debtor and then pay the judgment amount. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

The writ of garnishment is to be used completely at the court's discretion and should only garnish funds beyond what the defendant reasonably needs to support herself. Although it is in the best interest of all parties to have the judgment paid as soon as possible, the court must be cautious in issuing writs of garnishment, and it must be precise in directing the garnishee and mindful of how the garnishment will affect the defendant. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Before garnishing tenants' rental payments to pay the lessor's tax liens, the court should be provided with information concerning the building, including current interests in the building, current leases, and any other facts that the court might require to rule on the garnishment request and any information on the defendant's dependence on the monthly rental income and other income at her disposal so that the court may order with particularity a writ of garnishment. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89-90 (Pon. 2011).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the state executive to submit an appropriation bill, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

When the $50 monthly payments barely cover the monthly interest plus some of the accrued interest, if some of the rental payments to the judgment debtor can be garnished while complying with Kosrae Code § 6.2409(1) that allows debtors to retain property and income to provide reasonable living requirements, the trial court must do so unless there is an even faster way to satisfy the judgment. This is for the trial court to determine at a hearing where the parties present the necessary evidence for a determination. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

A writ of garnishment directing rent payments to the judgment creditor from the debtor corporation's commercial tenant, constitutes a proper exercise of the court's authority under the order-in-aid-judgment statute. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced in any manner known to American common law or common in courts in the United States. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

ATTORNEY AND CLIENT

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. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The purpose of Rule 4.2 of the Model Rules of Professional Conduct as it applies to organizations is not to pull a veil of partial confidentiality around facts, or even people who have knowledge of the matter in litigation by virtue of their close relationship with a party, but to protect against intrusions by other attorneys

upon an existing attorney-client relationship. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The prohibition in Rule 4.2 of the Model Rules of Professional Conduct against communications with a client organization represented by another attorney applies only to communications with an individual whose interests at the time of the proposed communication are so linked and aligned with the organization that one may be considered the alter ego of the other concerning the matter in representation. Panuelo v. Pohnpei (II), 2 FSM R. 225, 232 (Pon. 1986).

The comment to Rule 4.2 of the Model Rules of Professional Conduct was written with the understanding or assumption that it could only affect people who, at the time of the proposed communication, have a working relationship with the organization. Panuelo v. Pohnpei (II), 2 FSM R. 225, 233 (Pon. 1986).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM R. 416, 427 (Pon. 1988).

Truk State Bar Rule 13(a), which adopts the Code of Professional Responsibility, prevents conflicts of interest and appearances of impropriety by requiring that members of the state bar conduct themselves in a manner consistent with the American Bar Association's Code of Professional Responsibility. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr. 1987).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 67 (Pon. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334-35 (Pon. 1994).

While it may be unethical for an attorney to testify at a trial in which he is an advocate, no actual conflict exists when the attorney has not yet been called to testify and case may be resolved without a trial. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 170 n.3 (App. 1999).

A court cannot unilaterally relieve an attorney of his obligations to his clients. It is initially the attorney's responsibility, in consultation with his clients, to determine where his obligations and duties lie and if they will be satisfied by not participating in an appeal, and proceed accordingly. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 193 (Kos. S. Ct. Tr. 2001).

A lawyer must keep a client reasonably informed about the status of a matter. The failure of the counsel of record to inform his clients of an order striking their punitive damages count if new counsel did not file an appearance by March 30, 2001, would appear not to discharge that duty. Elymore v. Walter, 10 FSM R. 267, 268 (Pon. 2001).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs' quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473-74 (Pon. 2001).

Normally, a quasi-governmental agency would be represented by private counsel not associated with the agency. Hauk v. Board of Dirs., 11 FSM R. 236, 239 n.2 (Chk. S. Ct. Tr. 2002).

While counsel may be engaged for only limited purposes, it is expected that the court and the other parties would be so informed on the record at the representation's start. If the court has not been so informed, the court and the other parties, must presume that counsel is the counsel of record for all purposes whatsoever. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

Trial counsel may have a duty to take steps to protect a client's appeal rights even though trial counsel may not be obligated or intended to be appellate counsel. Goya v. Ramp, 13 FSM R. 100, 106 (App. 2005).

Trial counselors and attorneys are expected to handle different types of cases, both civil and criminal. A counsel need not necessarily have special training or prior experience to handle legal problems of a type with which the counsel is unfamiliar. Consequently, even if a trial counselor did not have prior experience with the specific types of offenses charged against the defendant, that lack of experience does not automatically result in lack of competency. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Since as an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system, clients have every expectation that counsel should vigorously pursue their interests along the line of uncovering incriminating evidence against the opposing parties even if it happens to involve another of counsel's clients. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

It is not the province of the court to prepare a party's case but that of counsel. Clients must be held accountable for their attorneys' acts or omissions. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel because to grant relief in such circumstances would penalize the nonmoving party for the conduct of the moving party's counsel. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 426, 429 (Chk. S. Ct. App. 2007).

When the contract is for an attorney to provide legal assistance for the plaintiffs' appeal case and when the terms are that the attorney will represent the plaintiffs and the plaintiffs will pay the attorney a $100 per hour, there is a promise between the two parties with an offer of performing legal services and the acceptance on the plaintiffs' behalf and there was mutual assent when the parties reached a meeting of the minds with the attorney making the offer and the plaintiffs accepting the offer. The consideration present

for the promise was that the attorney offered his legal services to the plaintiffs in exchange for the plaintiffs' money. There was a bargained-for exchange between the parties and what was bargained for was considered of legal value. The contract terms were definite and therefore there was a valid written contract between the parties for the performance of legal services for a fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

When an attorney had promised to handle an appeal case for the plaintiffs and when the attorney failed to file a brief in the case resulting in the appeal's dismissal, the attorney, by his failure to file a brief, breached his contract with the plaintiffs. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When the plaintiffs had a contract with the defendant attorney and their appeal case was dismissed without the plaintiffs getting their day on court due to the attorney's failure to file required materials with the appellate court, the plaintiffs are entitled to a refund of the $500 retainer that they paid the attorney in the case and to the $10 filing fee because $510 is the amount to put the non-breaching party, the plaintiffs, in a position they would have been in but for the attorney's breach. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646-47 (Kos. S. Ct. Tr. 2009).

Notice served on a represented party's attorney of record is notice to the party because clients must be held accountable for their attorneys' acts or omissions. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

Although the court must first look to FSM sources of law, it may look to U.S. sources for guidance in interpreting the Model Rules of Professional Conduct when FSM case law does not provide a complete answer. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.3 (Pon. 2012).

Although the court must first look to FSM sources of law and circumstances, when an FSM court has not previously construed an FSM ethical rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 n.1 (Kos. 2013).

In representing a client, a lawyer must not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the other lawyer's consent or is authorized by law to do so. Mori v. Hasiguchi, 19 FSM R. 16, 20 (Chk. 2013).

An attorney may rely on someone else to do the research and, based on past experience with that researcher or by double-checking the researcher's research, be able to certify that the filing was well-grounded in fact and warranted by law or by a good faith argument that this is what the law should be. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

If a disbarred or suspended attorney drafts a paper and an admitted attorney signs and files it, the attorney signature on the filing constitutes assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. That would subject the signing attorney to discipline under Model Rule 5.5(b), which prohibits an attorney from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney's reputation is an important and valuable professional asset. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

Under the foreign investment laws requiring noncitizens "engaging in business" to hold a valid foreign

investment permit, "engaging in business" includes providing professional services as an attorney for a fee. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Someone providing professional services for a fee, such as an attorney, is not considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

A noncitizen attorney, licensed to practice in the FSM since 1985 and a member of the Bar in good standing but currently resident and practicing on Guam, is excepted from the foreign investment permit requirement when he works in tandem with an FSM citizen licensed to practice in the FSM and when his involvement in the case has been from a remote location and, as a result, he has not been present in the FSM rendering professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Under 55 F.S.M.C. 419(1) and (2), no foreign investment permit is required of a noncitizen attorney when his representation directly involves "contract management activities" that relate to a public contract awarded for a civil works project to implement part of the Infrastructure Development Plan and that is supported by funds through the Amended Compact of Free Association Section 211. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349-50 (Pon. 2016).

An attorney cannot be said to come within the ambit of the 32 F.S.M.C. 204, which otherwise would require a foreign investment permit, when his legal representation, to date, has been conducted *in absentia*, and thus cannot be said to have rendered his professional services "while present in the FSM for more than 14 days in any calendar year" and when the present action involves an Infrastructure Development Plan project and the construction by his client was undertaken pursuant to a contract underwritten with Compact monies. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A minor child cannot bring suit through a parent acting as a next friend if the parent is not represented by an attorney. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

The requirement that a minor be represented by counsel is based on two cogent policy considerations. First, there is a strong governmental interest in regulating the practice of law. The second consideration is the importance of the rights at issue during litigation and the final nature of any adjudication on the merits. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

A non-attorney parent must be represented by counsel in bringing an action on behalf of a child. Pillias v. Saki Stores, 20 FSM R. 391, 395 (Chk. 2016).

– Admission to Practice

The normal Trust Territory High Court authorization to practice before it is unlimited as to time and covers the entire Trust Territory. Limited or provisional Trust Territory High Court authorization to practice law is not sufficient High Court "certification" to qualify an applicant for admission to practice under Rule I(A) of the FSM Supreme Court's Rules for Admission. In re Robert, 1 FSM R. 4, 4-5 (Pon. 1981).

The grandfather clause of Rule I of the FSM Supreme Court's Rules for Admission permits licensed or existing practitioners before the Trust Territory courts to continue in their same capacity by shielding them from the necessity of complying with the new licensing standards. In re Robert, 1 FSM R. 4, 7 (Pon. 1981).

In seeking authorization to practice before the FSM Supreme Court, if the High Court's authorization of the applicant to practice before it is not an unreserved certification the applicant does not fulfill the

requirements under the FSM Supreme Court's Rule for Admission I(A), and must fulfill the conditions required of new applicants. In re Robert, 1 FSM R. 4, 11-13 (Pon. 1981).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submission not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

Admission to appear for a particular case, pursuant to Rule 4(A) of the Rules for Admission to Practice, is liberally granted. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM 440, 443 (Truk 1988).

Where an attorney seeks to have another attorney disqualified on the grounds that such other attorney was not admitted to the state bar, and the attorney seeking the disqualification should have known that the other attorney was within an exception to that rule, the motion to disqualify is without merit and shall be denied. Nakayama v. Truk, 3 FSM R. 565, 568-69 (Truk S. Ct. Tr. 1987).

In a nation constitutionally committed to attempt to provide legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous, vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney the opportunity to practice law in that state. Carlos v. FSM, 4 FSM R. 17, 24 (App. 1989).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 1989).

The decision whether to permit an attorney, not licensed within the FSM, to practice before the FSM Supreme Court, in a particular case falls within the sound discretion of the trial judge. In re Chikamoto, 4 FSM R. 245, 248 (Pon. 1990).

FSM Admission Rule IV(A) does not provide a means for a nonresident attorney, who has not been licensed to practice before the court and who has no reasonable prospect of being licensed in the near future, nonetheless to be permitted to practice before the court on a continuing basis. In re Chikamoto, 4 FSM R. 245, 249 (Pon. 1990).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

FSM Admission Rule III presumes that an arrangement of reciprocity must already exist between the FSM Court and another jurisdiction, in order for the rule to apply. When no such arrangement exists, it must first be created before Rule III can be applied. In re McCaffrey, 6 FSM R. 20, 21 (Pon. 1993).

The fact that the Pohnpei Supreme Court admits attorneys of the FSM Bar does not alone create a formal arrangement of reciprocity. The arrangement must be formal, neither implied nor constructive. In re McCaffrey, 6 FSM R. 20, 22 (Pon. 1993).

The language of FSM Admission Rule III contemplates that formal arrangements between the FSM Supreme Court and other jurisdictions must exist before an attorney from another jurisdiction may apply for admission to the FSM Supreme Court on the basis of reciprocity. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281-82 (App. 1993).

FSM Admission Rule III is directed at attorneys residing outside of the FSM in other Pacific jurisdictions. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 282 (App. 1993).

Motions to appear are not granted as a matter of course and each application must be carefully reviewed for compliance with the Rules of Admission. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 466 (Pon. 1994).

The FSM Supreme Court's Chief Justice's constitutional powers to make rules governing the attorney discipline and admission to practice is limited to the national courts. He is not authorized to govern admission to practice in state courts. Berman v. Santos, 7 FSM R. 231, 236 (Pon. 1995).

The FSM Supreme Court and the state courts may each admit and discipline attorneys to appear before their respective courts. Berman v. Santos, 7 FSM R. 231, 237-38 (Pon. 1995).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

The power to make rules governing the admission of attorneys to practice in state courts is a state power, not a power of the FSM Supreme Court Chief Justice. Berman v. Santos, 7 FSM R. 624, 626 (App. 1996).

Once an attorney has started private practice she must submit a $25 fee to the Pohnpei Supreme Court in order to be admitted there even if she was exempt from that requirement before as a government attorney. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

A motion to appear pro hac vice requires a Rule II(B) certification as to the morals and character of the applying attorney. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

The FSM Supreme Court has the discretion to properly raise the issue of the fitness and character of an applicant for admission to the FSM bar even when the rule's requirements have been met by the applicant's actions because the court may require, in addition to the applicant's certificate, other proof of good character. In re Certification of Belgrove, 8 FSM R. 74, 77 (App. 1997).

When there are pending criminal or professional responsibilities charges against an applicant to the FSM bar the FSM Supreme Court normally has the necessary discretion to investigate and reach a conclusion concerning the applicant's character and fitness. That discretion may be abused by an unexplained, lengthy delay. Failure to exercise the discretion within a reasonable time is an abuse of the discretion. In re Certification of Belgrove, 8 FSM R. 74, 77-78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Admission to appear pro hac vice may be granted conditioned upon counsel's later providing to the court certificates of good standing in the jurisdictions where she is permitted to practice. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 521-22 (Pon. 2002).

When trial counselors seek to appear in the FSM Supreme Court without supervision, the court will, in addition to any relevant criteria specified in Rule IV.A., consider the availability to the trial counselor of an attorney for consultation; the client's wishes and whether the trial counselor had prior professional association with the client; the litigation's complexity and the importance of the issues to the FSM; the trial counselor's previously demonstrated competence and other factors indicating whether granting the motion would be in the interests of justice. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 522 (Pon. 2002).

When the issues involved in the litigation are complex, and are important to the people of Micronesia and of Pohnpei and when the trial counselor has had a prior professional association with the client, but had been required to appear with supervision in previous FSM Supreme Court cases in which he represented the client, and when there are several private attorneys in Pohnpei who are admitted to practice before the court, the trial counselor will be admitted to appear in the case only after he has submitted a written motion and a written agreement, signed by an attorney admitted to practice before the FSM Supreme Court, stating that the attorney will supervise him. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 522 (Pon. 2002).

A person seeking to appear *pro hac vice* in a case, but who is not licensed to practice law, nor admitted as a trial counselor in Chuuk or in any other jurisdiction is therefore moving to permit "third-party lay representation" in the case. Chuuk v. Ernist Family, 12 FSM R. 154, 156 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court follows the general rule that in order to obtain permission to appear for a particular case (*pro hac vice*), in a jurisdiction where the applicant is not admitted to practice, the applicant must be properly admitted to practice law in another jurisdiction. The only exceptions to this rule are when a party represents him or he self, *pro se*, or where a husband or wife appears on behalf of either or both when one or the other are parties to a lawsuit, pursuant to the custom that a spouse may represent the other spouse in matters involving either or both of them. Chuuk v. Ernist Family, 12 FSM R. 154, 156-57 (Chk. S. Ct. Tr. 2003).

While it might perhaps be better if the rule that admission *pro hac vice* requires admission in another jurisdiction could be relaxed or waived in some cases, the potential injury to the client, should the applicant fail to discharge his duties as an attorney properly, clearly outweigh the benefits of permitting him to act as an attorney without having the requisite credentials. For these reasons a motion for admission *pro hac vice* will be denied. Chuuk v. Ernist Family, 12 FSM R. 154, 157 (Chk. S. Ct. Tr. 2003).

Any attorney who assists parties in a case must be one admitted to practice before the national court. Without the court's prior authorization, attorneys or individuals who are not admitted to the national court are expressly prohibited from taking any part in any matter filed in the national court. Damerlane v. Sato Repair Shop, 12 FSM R. 231, 233 (Pon. 2003).

All persons admitted to practice law in Kosrae must comply with the Model Rules of Professional Conduct as adopted by the American Bar Association in August 1983 as amended through 1995. The word "lawyer" as it appears in the Model Rules is deemed to refer to attorneys and trial counselors practicing law in the state. George v. Nena, 12 FSM R. 310, 318 n.5 (App. 2004).

When a complaint and a later memorandum are signed by the plaintiffs and a practitioner not admitted to practice in the national courts and the practitioner has not moved to appear pro hac vice, the court must therefore disregard the practitioner's signature and consider the plaintiffs as appearing pro se only. Puchonong v. Chuuk, 14 FSM R. 67, 68 n.1 (Chk. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear. Goya v. Ramp, 14 FSM R. 303, 305 n.2 (App. 2006).

The filing of a motion to appear pro hac vice does not automatically entitle the applicant to appear.

Goya v. Ramp, 14 FSM R. 305, 308 n.4 (App. 2006).

All attorneys and trial counselors admitted to practice law before the FSM Supreme Court pursuant to the court's rules for admission to practice are eligible to appear before the FSM Supreme Court's appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When attorneys were granted permission to appear pro hac vice before the court's trial division in the underlying matter at issue in an appeal, but have not been admitted to practice law before the court, they must, if they intend to appear in the appeal, undertake the appropriate action to appear before the appellate division. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When counsel was admitted pro hac vice conditioned upon his submission of certificates of good standing from all jurisdictions in which he is admitted along with a sworn statement that complied with the morals and character requirement imposed under FSM Admission Rule II(B), but counsel failed to submit certificates of good standing for two of the three jurisdictions he was admitted in, his request to appear pro hac vice will be denied. Upon the submission of another request to appear pro hac vice which contains all the relevant documentation needed for the court to issue a determination on the request to appear, the court will reconsider its ruling. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 (App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules' time constraints and thus protecting the client's interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant's brief until he was fully licensed to appear before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)'s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant's flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

An argument that the residency requirement for foreign citizens to take the FSM bar exam violates the U.S. Constitution's privileges and immunities clauses is without merit. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Admitted attorneys are required to annually provide certain contact information and those attorneys who fail to comply are removed from the list of active members and are no longer authorized to practice before the FSM Supreme Court. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

An attorney who has not complied with FSM GCO 2012-01, § X, and who is thus "removed from the list of active members" remains a member of the FSM bar otherwise in good standing and licensed to practice law before the FSM Supreme Court and who, upon submission of the required contact information, will be included in or restored to the list of active members authorized to appear before the court. Until then the attorney is an inactive member of the bar in good standing. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

– Appearance

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either

then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial's afternoon session, he was not the party's counsel of record as of the date the notice of trial was served, and it is immaterial whether he received the notice of trial. Amayo v. MJ Co., 10 FSM R. 371, 378-79 (Pon. 2001).

When a court allows an attorney's limited appearance, it is not clear whether litigants represented in a limited manner understand that their attorney is not taking full responsibility for prosecuting or defending them. Thus trial judges should consider carefully, on a case-by-case basis, whether to allow "limited appearances." As a general rule, attorneys should either enter formal appearances and accept full responsibility for a case, or not be permitted to appear before the court. Panuelo v. Amayo, 12 FSM R. 365, 373 (App. 2004).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

A special appearance is for the purpose of testing or objecting to the sufficiency of service or the court's jurisdiction over the defendant without submitting to such jurisdiction. Civil Procedure Rule 12 obviates the need for special appearances, since that rule abolished the distinction between general and special appearances. Ehsa v. Pohnpei Port Auth., 14 FSM R. 567, 572 (Pon. 2007).

When one defendant's trial level counsel and his appellate counsel are both employed by the Kosrae Public Defender's Office and appellate counsel is admitted to practice before the FSM Supreme Court, but trial counsel is not, since both counsel are employed by the Kosrae Public Defender's Office, the appellate counsel properly appeared in the appeal, and it would have been improper for trial counsel to file the appeal, since he is not admitted to practice before the FSM Supreme Court. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

In the trial court, a party has the right to appear pro se. To appear "pro se" means to appear on one's own behalf; without a lawyer. A person appearing pro se thus appears only for himself and does not represent any other person or anyone else. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A pro se party can, of course, represent his own business when that business is merely a d/b/a because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A party appearing pro se cannot represent anyone else. That would be the unauthorized practice of law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation's regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation's shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization's constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Being off-island does not prohibit an attorney from appearing telephonically. In re Contempt of Jack, 20 FSM R. 452, 466 (Pon. 2016).

– Attorney Discipline and Sanctions

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM R. 18, 20 (Pon. 1981).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or when the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM R. 255, 261 (Pon. 1983).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM R. 173, 188 (App. 1986).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed, nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM R. 114, 117 (App. 1991).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM R. 170, 174-75 (App. 1991).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM R. 146, 147 (Pon. 1993).

The court may sanction an attorney by its inherent authority to enforce compliance with procedural rules whenever it is apparent that the attorney has failed to abide by such rules without good cause. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM R. 146, 148 (Pon. 1993).

In light of the court's policy for adjudicating matters on the merits the court may sanction counsel for initial noncompliance with the procedural rules rather than dismissing his client's case. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 229 (App. 1993).

A member of the FSM Bar may be suspended or disbarred if that individual has been suspended or disbarred by any other court. When an attorney has been suspended or disbarred in another jurisdiction and has not shown cause why he is not unfit to practice law in the FSM, he will be disbarred in the FSM. In re Webster, 7 FSM R. 201, 201 (App. 1995).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

An attorney who takes a fee for representation and fails to provide any services to his client and whose client has to sue him for the return of the fee has violated the bar's ethical rules and his oath, and no longer has the good moral character required of a member of the Chuuk State Bar and will be suspended from the practice of law. In re Suspension of Chipen, 7 FSM R. 268, 268-69 (Chk. S. Ct. Tr. 1995).

An attorney may be sanctioned when that attorney's use of two different addresses and his failure to monitor both addresses for service of papers causes delay. FSM Telecomm. Corp. v. Worswick, 7 FSM R. 420, 422 (Yap 1996).

A lawyer has an ethical obligation to disclose legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to her client's position. Iriarte v. Etscheit, 8 FSM R. 231, 237 (App. 1998).

When counsel has not been specifically advised that the court is considering the issuance of personal sanctions against him and he was not specifically given notice of a hearing on the court's motion to sanction him, the sanction will be vacated and a hearing scheduled to provide the counsel an opportunity to be heard on every matter relevant to the court's resolution of the issue. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 153 (Pon. 1999).

A disbarment proceeding is adversarial and quasi-criminal in nature and the moving party bears the burden of proving all elements of a violation. The same is true when an attorney disciplinary proceeding results in a lesser sanction. Any disciplinary proceeding has the potential to end in disbarment or suspension. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The FSM Disciplinary Rules do not encourage settlement or compromise between disciplinary counsel and the respondent attorney. Settlements between a complainant and the respondent attorney do not, in themselves, justify abatement of the disciplinary proceeding. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The reviewing justice has every right to reject a sanction proposed by the disciplinary counsel and respondent attorney. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165,

174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

Appellate counsel will not be sanctioned when they were not the party's counsel before the trial division or in previous appellate procedures and once they became counsel acted expeditiously to comply with the rules. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

When the pleadings, the documents submitted as evidence during the hearing, the responding attorney's signed affidavit which clearly and unequivocally states that he admits to a violation of Rule 1.16(d) and to a violation of Rule 1.7(a), and his statements during the hearing, constitute clear and convincing evidence establishing that violations of the Model Rules occurred, the court may find that the attorney violated Rules 1.7 and 1.16 of the Model Rules. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

Suspensions may run concurrently, beginning 30 days from the date that the Clerk of Court enters the order. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

In the event that a suspended attorney is reinstated under Rule 13 of the Disciplinary Rules, his future practice of law may be supervised for some time. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

A suspended attorney may be assessed the costs, excluding salaries, but including airfare, per diem, and car rentals, that were incurred in connection with the prosecution of his disciplinary matter. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

A suspended attorney is required to abide by the provisions of the Disciplinary Rules during his suspension, including Rule 12, which governs disbarred or suspended attorneys. In re Robert, 9 FSM R. 278a, 278h (Pon. 1999).

An attorney can be sanctioned in his individual capacity for willfully violating a valid court order, for causing the needless consumption of substantial amounts of the court's time and resources and for otherwise engaging in conduct abusive of the judicial process. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 327 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 329 (Pon. 2000).

When a court has issued no sanction in response to a discovery motion and sanctions of attorney's fees and costs in response to a second motion and when a third motion reveals that the attorney's behavior was then at the root of the problem to be corrected, an attorney's knowing and deliberate violation of a valid court order may result in personal monetary sanctions against him because while the court is cautious of exercising its inherent powers to issue personal monetary sanctions against an attorney, it cannot and will not tolerate continued discovery abuse. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 316, 331-32 (Pon. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party

in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney's personal actions or omissions, not on the court's frustration, no matter how justified, with previous counsel's actions or omissions, or with a recalcitrant client's actions or omissions that are beyond an attorney's control or influence. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court's work was done. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

The fact that a Professional Conduct Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek the Rule's enforcement. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

Kosrae Civil Procedure Rule 11 provides that for a wilful violation of that rule an attorney or trial counselor may be subjected to appropriate disciplinary action. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

Kosrae practitioners may be disciplined by the Kosrae Chief Justice after notice and hearing. In re Bickett, 11 FSM R. 124, 125 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to attorneys and trial counselors practicing before the Kosrae State Court. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A complaint that alleges violations of Model Rules 3.1, 5.1, and 8.4, taken together, are sufficient to allege a Civil Rule 11 violation. In re Bickett, 11 FSM R. 124, 126 (Kos. S. Ct. Tr. 2002).

A finding of subjective bad faith on the part of the attorney filing the pleading is required in order to impose sanctions under Kosrae's Civil Rule 11. In re Bickett, 11 FSM R. 124, 127 (Kos. S. Ct. Tr. 2002).

A complaint for declaratory judgment was not filed in subjective bad faith and thus did not violate Kosrae Civil Rule 11 when, although the claim did not survive a motion to dismiss, it was colorable, and the fact that the court later found that the dispute in question was not justiciable as a matter of law did not change that. Not every colorable claim will succeed, and the benefit of hindsight may not serve to bootstrap a Rule 11 violation. In re Bickett, 11 FSM R. 124, 128 (Kos. S. Ct. Tr. 2002).

When the court cannot conclude that the complaint for declaratory judgment constituted a claim not simply lacking in merit, but bordering on frivolity and when the court is not persuaded that there is clear evidence that the declaratory judgment claim was entirely without color and made for reasons of harassment or delay or for other improper purposes, the case was a colorable claim, supported by some authority. Thus Kosrae Civil Rule 11 was not violated when the complaint for declaratory judgment was filed. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

No authority leads to the conclusion that various procedural defects in the pleadings in themselves constitute sanctionable conduct, and the court finds such contentions to be without merit. In re Bickett, 11 FSM R. 124, 129 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to practitioners before the FSM Supreme Court. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

A lawyer must not knowingly make a false statement of material fact or law to a tribunal. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

Model Rule 1.2 prohibits a lawyer from perpetrating a fraud upon the court. If a party's attorney pursues a spurious lack of relevancy claim on the party's behalf with the specific intent to prevent the disclosure of evidence damaging to the party, then Rule 1.2 is implicated. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 230 (Pon. 2002).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

A proper sanction is to admonish an attorney in the strongest terms for his failure, as counsel of record, to appear at a scheduled hearing. Further such inattentiveness and lack of diligence may require the attorney's referral to the attorney disciplinary process. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

The practice of attorneys or trial counselors "ghost drafting" legal documents should, wherever possible, be strongly discouraged. In re Suda, 11 FSM R. 564, 566 n.1 (Chk. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct apply to all attorneys and trial counselors. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct are adopted pursuant to Kosrae State Code, Section 6.101(f), and applied to all counsel admitted to practice law in Kosrae through GCO 2001-5. Wakuk v. Melander, 12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A legal services' agency's request to withdraw based solely upon the agency's policy, even though in the past the agency has routinely violated its own policy, will be denied. The Model Rules of Professional Conduct, which regulate the conduct of all legal counsel admitted to practice law in the State of Kosrae, as adopted by General Court Order pursuant to sate law, take precedence over the agency's policy. Wakuk v. Melander, 12 FSM R. 73, 75 (Kos. S. Ct. Tr. 2003).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM R. 365, 373-74 (App. 2004).

When the plaintiff's letter specified that the defendant was given until March 31, 2004 to complete its remaining obligation to fill, spread and compact fill on the plaintiff's land, or face legal action and when despite the letter's deadline, the plaintiff did not wait to take legal action, but on February 25, 2004, only seven days after the letter's date, the plaintiff, through his counsel, filed a small claim, the plaintiff's failure to wait until the end of March 2004 to take legal action, contrary to his February 18 letter, raises the issue of the plaintiff's and his counsel's good faith. Counsel, in compliance with the Model Rules of Professional Conduct, is expected to abide by his own offers made on his client's behalf. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Good faith conduct is expected in matters filed in the Kosrae State Court. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

Any person admitted to practice law in the State of Kosrae may, after notice and hearing, be disciplined for violation of the Model Rules and an order may be entered pursuant to the Kosrae State Court's authority to discipline or disbar admitted trial counselors for cause. In re Mongkeya, 12 FSM R. 536, 538 (Kos. S. Ct. Tr. 2004).

When a respondent legal counsel fails to timely respond to an order and notice of disciplinary proceeding and the factual allegations made therein and also fails to request, within the prescribed time, an extension of time to respond either verbally or in writing, the factual allegations made in the order and notice shall be deemed admitted by the respondent for the purpose of the disciplinary proceeding. In re Mongkeya, 12 FSM R. 536, 538, 539 (Kos. S. Ct. Tr. 2004).

The disciplinary system for attorneys and trial counselors is structured not only to protect the public and maintain integrity of the judicial system, but also to inspire confidence in the public that the legal profession is being regulated. Consequently, it is imperative that that disciplinary proceedings be considered and initiated, as appropriate, where there has been allegations of misconduct by legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

It is implicit in the legal counsel's role as an officer of the court that he owes a duty of candor and honesty to the court. Thus a legal counsel's first duty is to the court and to the proper administration of justice. A legal counsel's duty of candor and honesty to the court applies even when the counsel is acting as a party and not as legal counsel. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

No breach of professional ethics or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by a legal counsel of false testimony and evidence in the judicial process. For this violation of ethics, disbarment is the presumptive penalty. It is appropriate to disbar legal counsel who have submitted documents known to be false with the intent to mislead the court. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Model Rule 3.3 requires legal counsel to take remedial measures when he discovers that false evidence was offered. The false evidence must be disclosed to the court and remedial action must be taken immediately. In re Mongkeya, 12 FSM R. 536, 539 (Kos. S. Ct. Tr. 2004).

Fair competition in the adversary system is secured by prohibition against alteration, destruction and concealment of evidence. Rule 3.4 ensures that litigation is conducted fairly. It prohibits a lawyer from altering a document that has potential evidentiary value. Suspension from the practice of law is appropriate discipline for misrepresentation by counsel. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A legal counsel's falsification of documents is prohibited under Model Rule 8.4(c). In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

Model Rule 8.4(d) prohibits legal counsel from engaging in conduct that is prejudicial to the

administration of justice. The Rule applies to both personal and professional conduct of legal counsel, encompasses conduct prohibited by other ethics rules, as well as conduct not specifically addressed by other rules. It includes conduct that has an adverse effect upon the administration of justice. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

In Kosrae, many persons are not sophisticated in knowledge of the judicial system. Consequently they place complete trust and faith in their legal counsel to properly present their claim and appear before the court. Improper conduct by one legal counsel reflects not only upon himself, but also upon the entire legal profession as a whole. The falsification of evidence and submission of false evidence prejudices the fairness of our legal system and leads to increased mistrust and skepticism by the public in the legal profession and the legal process. In re Mongkeya, 12 FSM R. 536, 540 (Kos. S. Ct. Tr. 2004).

A trial counselor admitted to practice in the State of Kosrae is subject to the Model Rules of Professional Conduct, and violates those rules when he alters and presents those altered checks as evidence in a case in which he is a party. He will be suspended from the practice of law and must notify in writing all clients he represents in any pending matters and any opposing counsel in any pending matters that he has been disqualified by court order to act as legal counsel and the Chief Clerk shall unseal his file and remove his name from the listing of persons admitted to practice law in the State of Kosrae. In re Mongkeya, 12 FSM R. 536, 540-41 (Kos. S. Ct. Tr. 2004).

The FSM Supreme Court's Disciplinary Rules apply to every attorney and trial counselor who practice before it, including those appearing pro hac vice. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

Any person may initiate a disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A civil action is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through the Chief Justice and the Chief Clerk in Pohnpei. A complaining party should, if it is so advised, file its disciplinary complaint with the Chief Justice and the Chief Clerk in Pohnpei. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

An attorney's actions in preparing a notice of appeal for filing by the appellant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who wish to appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Civil Rule 11. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

Attorney involvement in drafting pro se court documents constitutes unprofessional conduct and is inconsistent with procedural, ethical and substantive rules of court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court disapproves of ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. Counsel may, of course, always refer a pro se litigant to the court for the litigant to review a sample notice of appeal from a decision entered by Kosrae Land Court. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

A counsel's actions in preparing the answer on behalf of a defendant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Rule 11, which requires attorneys to sign documents that they have prepared for filing. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S.

Ct. Tr. 2004).

The Kosrae State Court considers ghostwriting to constitute unprofessional conduct and disapproves ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. The practice of ghostwriting prejudices the pro se litigant, who may believe that the counsel will continue to assist him throughout the litigation. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81-82 (Kos. S. Ct. Tr. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 82 (Kos. S. Ct. Tr. 2004).

Any person may initiate an attorney disciplinary complaint by advising the court of the nature of the charge and indicating the factual basis for the charges. This is done by referring the complaint to the Chief Justice in Palikir, Pohnpei where the Chief Clerk of the Supreme Court will assign the complaint a disciplinary proceeding docket number and open a file. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A closed appeal case is not the proper forum in which to pursue or resolve a disciplinary complaint. A proper forum may be reached through application to the Chief Justice and the Chief Clerk in Pohnpei. Only in that forum may a movant seek an order requiring the attorney to show cause why he should not be immediately restrained from engaging in the practice of law. No action on a disciplinary proceeding will be taken within a closed appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

The court's disciplinary procedures remain the means of redress for anyone who believes an FSM attorney has acted unethically. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

Under Rule 11, the court's discretion includes the power to impose sanctions on the client alone, solely on counsel, or on both. This is desirable because there are circumstances in which one of these actions is more appropriate than the other two. For example, when the offending conduct relates to work that lies within the counsel's supposed competence, especially when it is beyond the client's understanding, it is the former who should be sanctioned, not the latter. Amayo v. MJ Co., 14 FSM R. 355, 362 (Pon. 2006).

When an attorney has been convicted of a felony, Disciplinary Rule 10 places the burden on the respondent to prove that he or she should not be suspended pending the outcome of the disciplinary proceeding. An interim suspension may be terminated or modified upon showing of extraordinary circumstances. A weaker standard would subvert the purpose of the Rule 10 suspension, which is to protect the public and the integrity of profession from an attorney who has been convicted of serious crime. In re Fritz, 14 R. 563, 564-65 & n.1 (Pon. 2007).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

Even if the court were to accept as true the respondent attorney's assertion that his conviction has not adversely affected the public's views on his integrity, honesty, and untrustworthiness, that conclusion would

not end the matter since the court has a duty to protect and advance the public's trust in the judicial system and therefore in officers of the court and if that trust is in such a state that the public's perception is not adversely affected when convicted felons are permitted to act as officers of the court, then it may be the court's duty to help improve the public's perception. In re Fritz, 14 R. 563, 565 (Pon. 2007).

That there are no other local private attorneys who are available to provide legal services to the public in Chuuk does not alone constitute extraordinary circumstances that would allow the court to refrain from suspending the respondent attorney. In re Fritz, 14 R. 563, 565-66 (Pon. 2007).

When a respondent attorney is suspended from the practice of law, he is advised to take all actions required of him by the Disciplinary Rules and in particular must perform the actions required by Disciplinary Rule 12. In re Fritz, 14 R. 563, 566 (Pon. 2007).

A term of suspension under Disciplinary Rule 10 runs until the court enters a final order of discipline in or dismisses the disciplinary action. In re Fritz, 14 R. 563, 566 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

A single justice's reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney's inability to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's failure to comply with such rules and orders. The attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

An attorney is the real party in interest for any sanction imposed on him personally. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 122 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court's rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney's or the firm's failure to comply with such rules and orders. Thus, an attorney's admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 124 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice's power. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 126 (App. 2008).

If a party used an expletive in its filing, the court would entertain the imposition of sanctions, but, if the reference to an expletive is a characterization on the other party's part, that characterization itself may be sanctionable if it departs from zealous advocacy that at the same time remains polite, professional discourse. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.4 (Pon. 2009).

When the Kosrae State Court is very concerned about a number of possible ethical violations committed by an attorney in handling a case in the FSM Supreme Court appellate division, the Kosrae State Court will not address these ethical rules but has a duty to inform the FSM Supreme Court of the possible violations. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

A court's firm and definite statement that an attorney acted unethically (as opposed to a statement that he may have acted unethically) appears to be a reprimand. A reprimand, which can be either public or private, is sanction that a court may impose on an attorney. In re Sanction of George, 17 FSM R. 613, 616-17 (App. 2011).

If a lawyer has knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the lawyer must inform the Chief Clerk for referral to the Chief Justice. Mori v. Hasiguchi, 19 FSM R. 16, 21 n.3 (Chk. 2013).

Counsel is disingenuous and lacks candor toward the appellate tribunal when the trial court correctly cited and relied on a controlling appellate division decision but she chose to ignore this authority and deliberately failed to address it in either the brief or during oral argument even though that decision was known to counsel because the trial court cited it and relied on it when it denied the motion for a default judgment. Damarlane v. Damarlane, 19 FSM R. 97, 104 & n.1 (App. 2013).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Considering the seriousness of an attorney disciplinary proceeding, the service on the attorney should be the same as that required for the service of process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

In an attorney discipline proceeding the facts must be proven by clear and convincing evidence and not by the lower preponderance-of-the-evidence standard. In re Sanction of Sigrah, 19 FSM R. 305, 312 n.3 (App. 2014).

The practice of "ghostwriting" refers to the conduct of an attorney who prepares pleadings and provides substantial legal assistance to a pro se litigant, but does not enter appearance or otherwise identify himself

or herself in the litigation. Ghostwriting or drafting filings for a pro se litigant without that fact being disclosed violates an attorney's ethical obligation of candor toward the tribunal. The rationale for court disapproval of ghostwriting is that courts liberally construe pro se pleadings precisely because they were drafted without professional help and if a pro se litigant falsely appears to be without professional assistance, that litigant gains an unfair advantage. In re Sanction of Sigrah, 19 FSM R. 305, 312 (App. 2014).

The imposition of disciplinary sanctions is subject to due-process scrutiny. An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on her whether that sanction is imposed on her under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Sigrah, 19 FSM R. 305, 313 (App. 2014).

An attorney relying on others, even non-attorneys, to do the research or drafting is not sanctionable since a lawyer is not prohibited from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. By signing a filing, the signer retains or assumes responsibility for the work. In re Sanction of Sigrah, 19 FSM R. 305, 313-14 (App. 2014).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

When the then disciplinary counsel failed to serve a formal complaint on the respondent attorney at the end of 2007 or in 2008 even though the respondent attorney's address and workplace were known, this weighs in the favor of dismissal of a disciplinary action still pending in 2014 when a complaint was finally served. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

To dismiss a disciplinary complaint for the long delay in prosecuting it, needs a showing that the prejudice created by the delay is actual or specific prejudice; that is, the respondent attorney must show that because of the passage of time certain specific favorable witnesses are now unavailable or that certain evidence is no longer available. Prejudice is not shown when the defendant does not state that any one particular witness now has an impaired memory or is no longer available, or what that witness would testify to if his or her memory were not impaired. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578 (Pon. 2014).

Even when the monetary discovery sanctions imposed on the respondent attorney's client and the client's eventual compliance with all discovery orders in that case serve as the full and final resolution of the discovery dispute from which a disciplinary referral case arose, this does not mean that an attorney cannot be disciplined if there is a pattern of discovery abuse by that attorney in a number of cases even if the clients in all of those cases were sanctioned and complied. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 578-79 (Pon. 2014).

A disciplinary complaint may be dismissed when the disciplinary complaint arose from a single case in which the respondent attorney abused the discovery process; since the attorney's duty is to zealously represent clients; since comprehensive discovery sanctions were imposed on the respondent attorney's client; and since there was long delay in contacting and serving the respondent attorney once the respondent attorney had been located in the United States. In re Attorney Disciplinary Proceeding, 19 FSM R. 576, 579 (Pon. 2014).

The FSM Supreme Court cannot impose reciprocal discipline on an attorney for the failure to pay annual bar dues in CNMI because this would not constitute misconduct in this jurisdiction since there are no annual bar dues in the FSM Supreme Court. The court cannot impose reciprocal discipline when the conduct disciplined in the other jurisdiction does not constitute misconduct in this jurisdiction. In re Buckingham, 19 FSM R. 582, 583 n.1 (Pon. 2014).

An attorney convicted in the Northern Marianas of use of public supplies, services, time, and personnel for campaign activities, use of the name of a government department or agency to campaign for a candidate running for public office, three counts of misconduct in public office, theft of services, and conspiracy to commit theft of services and suspended from the practice of law in the Northern Marianas and Colorado, will be suspended from the practice of law in the Federated States of Micronesia and may apply for reinstatement once his right to practice law has been reinstated in both the State of Colorado and the Commonwealth of the Northern Mariana Islands or once five years has elapsed, whichever is sooner. In re Buckingham, 19 FSM R. 582, 583-84 (Pon. 2014).

– Disqualification of Counsel

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

Where a member of the office of the public defender has a conflict of interest, based upon his familial relationship with the victim of the crime of which the defendant is accused, but where he is under no traditional obligation to cause harm to the defendant and has done nothing to make other members of the office feel that they are under any such obligation, and where there is no showing that the conflict would have any actual tendency to diminish the zeal of any other members of the office, the conflict of the first counsel is not imputed to the other members of the office. FSM v. Edgar, 4 FSM R. 249, 251 (Pon. 1990).

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

The imputed disqualification provision of Rule 1.10(a) of the FSM Model Rules of Professional Conduct is not a *per se* rule and where the other attorneys associated with the attorney who seeks disqualification are able to give full loyalty to the client it is proper for the court to find that the disqualifying condition is not imputed to others. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM R. 29, 30 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM R. 130, 135 (Chk. S. Ct. Tr. 1991).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

The rules, MRPC 1.10, for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers who are governed by MRPC 1.11(c). MRPC 1.11 does not impute the disqualification of one member of a government office to the other members. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

An attorney is not disqualified from representing multiple parties against a defendant on the grounds that he did not join as defendants former employees of some of the plaintiffs who would be liable if the defendant is liable. Pohnpei v. Kailis, 6 FSM R. 460, 462-63 (Pon. 1994).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

Model Rule 1.9 is inapplicable to cases where an attorney is representing two clients at the same time because it applies to a conflict arising from the representation of a former client. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440 (Chk. 1998).

Model Rule 1.11(c) contemplates successive private and government employment so long as the lawyer does not participate in a matter in which he participated personally and substantially while in private practice so when steps have been taken to insure that a government lawyer would do no work related to his private employment the Model Rules have been complied with. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 440-41 (Chk. 1998).

Allegations of foul language and intimidation in a settlement conference are alone insufficient grounds for removing an attorney from a case at a late stage of the litigation. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, the court's inquiry is generally required when a lawyer represents multiple defendants. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The Model Rules are not designed to be used by one litigant to make prosecuting or defending the action more difficult for his adversary. Therefore, a court considers a motion to disqualify counsel with caution, considering the possibility that the motion is potentially being used as a technique of harassment. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. Nix v. Etscheit, 10 FSM R. 391, 396 (Pon. 2001).

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Even if a direct conflict exists between defendants' counsel's representation of an individual and a two corporations, Rule 1.7 allows a lawyer to represent all of the defendants if the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Disqualification of counsel is not warranted when counsel believes that his representation of all defendants will not adversely affect his representation of any one of the defendants; when the reasons for this belief were provided to all defendants in writing, and all defendants consented after consultation; when the plaintiffs have not introduced any evidence that would lead the court to doubt counsel's statement; and when the court also finds that his belief that counsel's representation of all defendants will not adversely affect the representation of any one of the defendants is legitimately reasonable. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A lawyer cannot act as an advocate at a trial in which the lawyer is likely to be a witness except when: 1) the testimony relates to an uncontested issue; 2) the testimony relates to the nature and value of legal services rendered in the case; or 3) disqualification of the lawyer would work substantial hardship on the client. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Plaintiffs' desire to call opposing counsel as a witness does not represent a basis for opposing counsel's disqualification when, although counsel may have knowledge of evidence of material matters in the case, the plaintiffs have not established that opposing counsel is the only witness who could testify about such evidence, when the plaintiffs can introduce this evidence by other methods, and when it would constitute a substantial hardship to a defendant to disqualify her attorney of over fifteen years and require her to find another. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

A lawyer who has formerly represented a client in a matter is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the to the previous matter and when the lawyer has received no confidential information from the former client relating to the current

matter. Nix v. Etscheit, 10 FSM R. 391, 399 (Pon. 2001).

There is no conflict of interest for Legislative Counsel to represent a Senator challenging a law passed by the Legislature when is not a challenge of the Legislature as an institution because it is the Executive that is charged with the duty of defending challenged laws, not the Legislature, and there is no conflict of interest for Legislative Counsel to represent a Senator asserting legislative privilege when the Senator and the Legislature have similar interests with respect to interpretation of the privilege provided by the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

Rule 1.7 permits the attorney to continue representation even where the representation is adverse to two or more clients, so long as each client consents after consultation. Kosrae v. Sigrah, 11 FSM R. 26, 28 (Kos. S. Ct. Tr. 2002).

The relevant inquiry when conflicting representation is alleged is whether the subject matter of the two representations is substantially related. If the attorney could have obtained confidential information in representing one party that he could thereafter use in representing the second client, the interests are conflicting and the attorney must be disqualified. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A party alleging representation of conflicting interests must show that there is a substantial relationship between the subject matters of the representations. This is especially so where the party seeking the disqualification is only a "vicarious" client. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

If each member of the Chuuk Legislature could consider the Legislative Counsel his "personal lawyer," then the Legislative Counsel would have perpetual conflicts of interest which would prevent him from providing legal counsel and advice to his true client, the Legislature as a collective body. The fact that the Legislature retains counsel to serve its collective interests does not entitle every member to assert the disqualification of that counsel in an unrelated matter, where only the member's personal interests are involved. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

A motion to disqualify appellant's counsel in an election contest will be denied when appellee's claim of "vicarious" representation fails due to a complete lack of evidence demonstrating that the counsel provided to the Sixth Chuuk Legislature is substantially related to the issues presented in this election contest, namely the election of a member to the House of Representatives for the Seventh Chuuk Legislature. In re Nomun Weito Interim Election, 11 FSM R. 458, 460-61 (Chk. S. Ct. App. 2003).

When a summary judgment motion is clearly on behalf of two defendants and makes them adverse to a third defendant, it is clear that the third defendant needs to attempt to retain other counsel. Fredrick v. Smith, 12 FSM R. 150, 153 n.1 (Pon. 2003).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

A government lawyer, like any lawyer, cannot represent a client if the representation of that client may be materially limited by the lawyer's own interests. The lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

The court declines to establish a bright line rule that any prosecutor who has some involvement with another case involving the defendant must always be disqualified. To conclude that prosecutors who are

allegedly later victims of offenses committed by someone they are prosecuting must always be disqualified from continuing to prosecute would set an unhealthy precedent. It would provide an unwanted incentive for a criminal defendant who sought to disqualify a certain prosecutor to obtain his disqualification through extralegal means. FSM v. Wainit, 12 FSM R. 172, 178-79 (Chk. 2003).

When prosecutors have a special emotional stake or interest in a case, their disqualification from any future involvement with the prosecution is warranted. The current prosecutor will therefore make certain that there is no contact with the former prosecutors about the case and that they have no access to the case file. The current prosecutor may be ordered to file and serve a notice detailing all steps taken to implement this precaution. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

Disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. Unlike private law firms where the disqualification of one member of the firm requires the disqualification of the firm, the disqualification of all government attorneys in an office is not required when one of them is disqualified. FSM v. Wainit, 12 FSM R. 172, 179 (Chk. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

A lawyer must not represent a client if the representation will be "materially limited" by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected, and the client consents after consultation. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Rule 1.9 is aimed at protecting the former client rather than the current client. It is the former client who is the one who may consent or refuse to consent if the positions are adverse. George v. Nena, 12 FSM R. 310, 318-19 (App. 2004).

When there has been no showing that the appellant's attorney had an actual conflict, and, even if there was some conflict, the appellant must demonstrate that the trial judge committed plain error by failing to disqualify counsel from representing him. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

An appellant is not entitled to reversal and the trial judge did not commit any plain error when the judge did not inquire into the appellant's attorney's potential conflict of interest and when the appellant made no showing that the alleged conflict adversely affected counsel's performance since the attorney competently presented witnesses, entered evidence and made relevant objections. A conflict of interest is a conflict that affects counsel's performance – as opposed to a mere theoretical division of loyalties and without such a showing, the appellant cannot demonstrate that his attorney's connection to previous stages of the proceedings, related to an adjacent land parcel, affected the trial de novo's fairness or integrity. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

A government lawyer, like any other lawyer, cannot represent the government if the representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a government lawyer's public responsibility involves the exercise of discretion, a prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the

accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Since a prosecutor has wide discretion in deciding whether to initiate a particular criminal prosecution, a prosecutor's emotional interest sufficiently strong to impair the impartial exercise of this discretion will disqualify the prosecutor from any participation in the matter, including filing the information. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When prosecutors filed a case just two months after the frightening events allegedly caused by the defendant, and when it seems reasonable for them to have had emotional interests that would disqualify them from impartially exercising their discretion whether to prosecute the same defendant in any new cases, their failure to disqualify themselves raises an appearance of impropriety. Accordingly, a motion to disqualify those prosecutors will be granted. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When an information was filed by two prosecutors who should have been disqualified from filing it or being involved in their official capacity in the bringing of charges against the defendant, then upon a timely objection, the information will be dismissed. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

A lawyer cannot act as advocate in a trial in which the lawyer is likely to be a necessary witness. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A government lawyer cannot represent the government when representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests can include emotional interests. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. Being the victims in a crime in which force was allegedly used is just such a strong emotional interest to disqualify a government attorney from prosecuting that same crime. A prosecutor who has a conflict of interest cannot administer justice. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. FSM v. Wainit, 12 FSM R. 376, 380 (Chk. 2004).

Since a lawyer's conflicts are usually imputed to all in the lawyer's office or firm, one member's disqualification generally requires the entire firm's disqualification, but unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. This different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 12 FSM R. 376, 380 & n.2 (Chk. 2004).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

A former employee of the now defunct Kosrae State Land Commission who was not employed by the Land Commission in 1984 when the Determination of Ownership was issued for the subject parcel does not

have any conflict of interest in this matter. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 18 (Kos. S. Ct. Tr. 2004).

When plaintiffs' counsel admitted that he had signed the verified complaint on behalf of another and that the other had been represented through proxy at a meeting during which the lawsuit was discussed and when, although that other later appeared and testified that he did not consider himself to be counsel's client for the civil action, that he did not give permission for the complaint to be filed on his behalf, and that he does not want to be involved in this lawsuit but in a deposition did state under oath that he asked the proxy to act on his behalf, the court may conclude that at the time the complaint was filed, plaintiffs's counsel had reasonable basis to accept the proxy's representation of the other and his approval to file the complaint on his behalf and counsel will not be disqualified on that basis. Allen v. Kosrae, 13 FSM R. 55, 57-58 (Kos. S. Ct. Tr. 2004).

Model Rule 7.3 prohibits the solicitation of professional employment from a prospective client with whom the lawyer had no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. But when a person attended and participated in a meeting regarding the subject of this matter and in doing so, expressed his interest in this matter, and when counsel's later contact with him after the meeting did not involve harassment or duress, counsel's contact with him does not provide an adequate basis for disqualification of counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Plaintiff's counsel's employee's disruptive actions at a meeting at which a defendant presided do not provide an adequate basis for disqualification of plaintiffs' counsel because she was also a parent of children who attend Kosrae High School and therefore had adequate reason to attend that meeting as an interested parent and because the defendants did not present sufficient evidence to prove that her actions at that meeting were encouraged or supported by plaintiffs' counsel. Allen v. Kosrae, 13 FSM R. 55, 58 (Kos. S. Ct. Tr. 2004).

Defense counsel's delayed recognition that the victim was his second cousin, and his delayed notice to the court suggests that counsel's relationship to the victim does not result in a conflict of interest which would require counsel's disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

When the prosecution of defense counsel for contempt was not in good faith and had the effect of appearing unfair and interfering with the defendants' choice of counsel and when that prosecution was not demonstrated to be harmless, the prosecutor will be disqualified from prosecuting those defendants. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

Neither the prosecutor's search of another private law office on Pohnpei nor defense counsel's possible fee-forfeiture warrant the prosecutor's disqualification. Nor does defense counsel's civil suit against the prosecutor have any bearing on whether the prosecutor should be disqualified. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

The court will not establish a principle that the Department of Justice cannot prosecute a defendant accused of committing an offense against Department of Justice personnel. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

Under the Model Rules of Professional Responsibility (adopted by FSM GCO 1983-2), a government lawyer's disqualification is not imputed to the others in that government office. FSM v. Wainit, 13 FSM R. 433, 442 n.5 (Chk. 2005).

Individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant the entire office's disqualification. FSM v.

Wainit, 13 FSM R. 433, 442 (Chk. 2005).

The entire FSM Department of Justice will not be disqualified (and by implication the information dismissed) because one of its members will be a witness in the case. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by FSM MRPC Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. That members of the prosecutor's office are witnesses does not disqualify the entire office. FSM v. Wainit, 13 FSM R. 433, 443 (Chk. 2005).

Although a lawyer's conflicts are usually imputed to all in the lawyer's office or firm so that one member's disqualification requires the entire firm's disqualification, the disqualification of all government attorneys in an office, unlike private law firms, is not required when one is disqualified. This different treatment for private and government law offices stems, in part, from government attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 13 FSM R. 433, 443 & n.6 (Chk. 2005).

A lawyer must not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client unless 1) the lawyer reasonably believes the representation will not be adversely affected; and 2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

In criminal cases the potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and FSM MRPC R. 1.6(b)'s requirements are met. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Rule 44 requires that the trial court inquire into possible conflicts when criminal defendants are charged or tried together and are represented by the same counsel or firm, and unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court must take such measures as may be appropriate to protect each defendant's right to counsel. Nena v. Kosrae, 14 FSM R. 73, 79-80 (App. 2006).

When the FSM Secretary of Justice approached a defendant to discuss, and did discuss, a possible plea agreement without the presence or prior consent of his attorney, but the incident was short and ended with the defendant saying he wanted to discuss it with his lawyer and when no prejudice was alleged or shown, the Secretary of Justice's actions did not form any part of the basis of the FSM Department of Justice's disqualification and the three defendants' severance, but the court had no choice but to refer the matter to the disciplinary process. FSM v. Kansou, 14 FSM R. 171, 174 (Chk. 2006).

The court cannot give any credence to a contention that a prosecutor's complete disqualification was not required because of the ground for the disqualification. A disqualification is a disqualification. FSM v. Kansou, 14 FSM R. 171, 174-75 (Chk. 2006).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The result of a prosecutor's disqualification from prosecuting three co-defendants is that the government had a choice – it could either move to sever those three defendants and assign a different

assistant attorney general to prosecute them and insulate the disqualified prosecutor from that prosecution, or it could have assigned a different assistant attorney general to prosecute all of the co-defendants. A detailed screening order is inappropriate when the government, at least theoretically, had a choice to make – a new prosecutor for the case, or seek severance into two cases. This is a choice that, at least initially, the prosecution, not the court, must make. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

Although the court was reluctant to disqualify the FSM Department of Justice from prosecuting three co-defendants and ordering their severance from the trial scheduled to start the same day, when no lesser sanction presented itself and the defendant has met his burden and established that a disqualified (former) prosecutor has assisted the current prosecutors in preparing the case against him and the government did not establish, or try to establish, that the disqualified former prosecutor was effectively screened from the prosecutors in the case, the entire FSM Department of Justice is therefore disqualified. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

The court must view with caution any motion to disqualify opposing counsel because such motions can be misused as a technique of harassment. McVey v. Etscheit, 14 FSM R. 207, 210 (Pon. 2006).

If opposing parties are only former clients, then counsel would be disqualified from representing the plaintiffs only if this is the same or a substantially related matter in which the plaintiffs' interests are materially adverse to the former client's interests unless the former client consents after consultation; or if counsel uses information relating to the representation to the former client's disadvantage except as FSM MRPC Rule 1.6 would permit with respect to a client or when the information has become generally known. McVey v. Etscheit, 14 FSM R. 207, 211 (Pon. 2006).

If any of the defendants is plaintiffs' counsel's current client, then he cannot represent the plaintiffs unless he reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. McVey v. Etscheit, 14 FSM R. 207, 211, 213 (Pon. 2006).

Counsel remains a client's attorney in a case when that case has not come to an end and the decision in it was apparently unsatisfactory to the client and since counsel never personally consulted with her after that decision about what further course of action she might want taken or even whether further possible action was desirable and neither took any steps to formally withdraw from that case. Counsel is therefore disqualified from representing the plaintiffs against her because that would adversely affect his relationship with his earlier, and still current, client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

When a "supplement" to a motion to disqualify a law firm from representing one defendant, seeks to disqualify the law firm from representing any defendant in the case, it is properly considered a separate motion. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

A motion to disqualify an attorney generally must be made at the earliest opportunity. When the motion was not made until shortly after a conflict arose that could support a disqualification motion and since the Model Rules contemplate that a disqualifying conflict may not arise until after representation has been undertaken, under the circumstances, the motion was timely. McVey v. Etscheit, 14 FSM R. 207, 213 (Pon. 2006).

Since loyalty is an essential element in the lawyer's relationship to a client, if an impermissible conflict of interest exists before representation is undertaken, the representation should be declined, and if such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. McVey v. Etscheit, 14 FSM R. 207, 213-14 (Pon. 2006).

When a current client has not consented to a law firm's adverse representation of another client, this is an impermissible conflict in violation of FSM MRPC R. 1.7(a). When Rule 1.7(a) applies, it commands that a lawyer not represent the clients in question. This means that a lawyer must withdraw if the conflict is discovered after the concurrent representation is undertaken. McVey v. Etscheit, 14 FSM R. 207, 214

(Pon. 2006).

The lawyer must withdraw from even a long-standing, more remunerative client when that representation becomes adverse to another, newer client even if the law firm terminated its representation of the newer client in an attempt to avoid a conflict as soon as it knew that a conflict would arise because generally, an attorney cannot choose to withdraw from representing a client because he might then be able to represent another more desirable client. McVey v. Etscheit, 14 FSM R. 207, 214 & n.10 (Pon. 2006).

If two firms share a common lawyer they will be treated as a single firm for purposes of disqualification. Similarly, for purposes of imputed disqualification under Rule 1.10, the two firms will be considered as one entity. Accordingly, it is incumbent upon the two firms to develop a procedure for screening conflicts of interest which will recognize and respond to the unique circumstance created by sharing an attorney in their respective legal practices. McVey v. Etscheit, 14 FSM R. 207, 215 (Pon. 2006).

The court has not "qualified" an attorney to remain as a party's counsel in litigation when the court's order only noted that that counsel remained that party's counsel because no one had moved to disqualify him as her counsel. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

Whether opposing counsel is disqualified from representing his wife, has no effect on whether moving counsel is disqualified from representing his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When the court's alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged errors persuasive, it could not possibly grant the relief sought – moving counsel's appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When a lawyer was prohibited from representing the clients by Rule 1.7, his disqualification was imputed to his partner because, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys' other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

A balance-the-equities analysis found in two U.S.cases is not required in attorney disqualification cases involving adverse representation because other cases to the contrary are more persuasive. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

The court obeyed Rule 1.10(a)'s clear command and imputed a lawyer's disqualification to his partner, rather than trying the law firm's proposal to erect a Chinese wall between them. Because the law firm is a private firm, motivated by the profit incentive and, unlike government law offices, a "Chinese wall" is not an appropriate remedy for a private law office. The different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice; thus, unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

Disqualification of a party's counsel is not warranted because that counsel approved for legal sufficiency the notice of intent to adopt a regulation that included, unaltered from a previous regulation, the regulatory provision at issue in the action. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508-09 (Pon. 2006).

Since a trial court's decision to disqualify an attorney from participation in a given case is a decision falling within a trial court's inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court's discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

When the Secretary of the FSM Department of Justice is an attorney in good standing with the court, there is no legal authority that would serve as a basis to disqualify the Secretary from participating in a court case on the ground that she might have been referred to the disciplinary process in different case. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

Since the Disciplinary Rules provide for the confidentiality of all pending disciplinary matters, and since the defendant's various motions concerning possible disciplinary action against the Secretary of Justice have no bearing on the case's substantive outcome, the court, in its discretion, the various filings that refer in any way to a possible disciplinary matter, whether such a matter is pending or not, will be stricken from the record. FSM v. Zhang Xiaohui, 14 FSM R. 602, 613 (Pon. 2007).

The Model Rules of Professional Conduct provide rules of reason, which should be interpreted with reference to the purposes of legal representation and of the law itself. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive. The MRPC does not provide binding rules of law, but the numerous FSM cases addressing the issue of disqualification of government lawyers are binding the court according to the rule of *stare decisis*. Chuuk v. Robert, 15 FSM R. 419, 422 n.1 (Chk. S. Ct. Tr. 2007).

Except as law may otherwise expressly permit, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. When a client is a government agency that agency is treated as a private client for the purposes of the rule if the lawyer thereafter represents another government agency. Chuuk v. Robert, 15 FSM R. 419, 422-23 & n.2 (Chk. S. Ct. Tr. 2007).

No lawyer in a firm with which a former government lawyer is associated may knowingly undertake or

continue representation in a matter in which the former government lawyer participated personally and substantially as a public officer or employee unless 1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and 2) written notice is given as soon as practicable in order to give the government agency a reasonable opportunity to ascertain compliance with the rule. Chuuk v. Robert, 15 FSM R. 419, 423 & n.3 (Chk. S. Ct. Tr. 2007).

The policy behind the waiver and screening provisions are intended to provide a means for government lawyers to continue in public service by not unduly restricting changes in their employment. Thus the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government since the government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. Thus, in the case of government lawyers, the notice and screening provisions provide a favored means to prevent the vicarious, or imputed, disqualification of an entire office when one of its lawyers has a conflict. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

In deciding a motion to disqualify, the court must render its decision in a manner consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources and it also has a small government legal office and few other lawyers available. Thus the court, consistent with the FSM's social and geographical configuration, should not order the government to go outside its office for an attorney unless it is absolutely necessary. Chuuk v. Robert, 15 FSM R. 419, 423 (Chk. S. Ct. Tr. 2007).

The rules for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers; disqualification of one government office member is not imputed to the other members. With respect to cases involving a disqualified supervising attorney, individual rather than vicarious disqualification is the general rule but individual disqualification must be complete and any participation or anything less than complete abstention by a disqualified member of a prosecutor's office in a supervisory capacity would warrant disqualification of the entire office. Thus, unless the court is satisfied that a supervising attorney has not participated in and has completely abstained from a legal matter, the supervising attorney's entire office warrants disqualification. Chuuk v. Robert, 15 FSM R. 419, 424 (Chk. S. Ct. Tr. 2007).

Since cases where vicarious disqualification of government attorneys is warranted often are predicated on the supervising attorney's personal or emotional interest, bias, or involvement in the case and consequent issues regarding the supervising attorney's attempt to influence the case's outcome, when the disqualified Chief Public Defender did not have any actual communication with the FSM Public Defender's Office Chuuk branch regarding the substance of the case and the only contact he had with the Chuuk Branch Public Defender's Office was to assign the case according to the defendant's request; when there is no suggestion that he had a personal or emotional interest that would lead him to attempt to influence its outcome and the court is unable to discern that he had done anything other than completely abstain from any participation in the action; when the Chuuk branch is in a separate office hundreds of miles from the Chief Public Defender's Office in Pohnpei, which in effect creates a natural screen from any accidental disclosures between the FSM Public Defender's Office and its Chuuk branch office regarding the case's substance although they are part of the same "office" for MRPC and vicarious disqualification purposes, and since the policy behind Rule 1.11 is to ensure the continuing service of government attorneys when they change employment and to disqualify them only if it is absolutely necessary, disqualification of the entire FSM Public Defender's Office, including the Chuuk office, is not warranted since the court found no evidence the Chief Public Defender participated in handling the defense. Chuuk v. Robert, 15 FSM R. 419, 424 & n.5 (Chk. S. Ct. Tr. 2007).

A counsel's affidavit used to establish probable cause places counsel in the position of being called as

a witness in the case and detracts from the evidence's reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. When a joint notice of appeal has already been filed, the trial court will merely note the potential for conflict with respect to the substantive issues on appeal and leave for the appellate court any further resolution of a potential conflict of interest arising from counsel's joint representation. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

If there is a present lawyer-client relationship with an adverse party, the perceived conflict would be analyzed under provisions of Model Rule of Professional Conduct 1.7, and if the law firm does not have a present lawyer-client with the adverse party but has represented the adverse party in the past, the adverse party is a former client and the perceived conflict would be analyzed under the provisions of Rule 1.9. The issue regarding whether a lawyer-client relationship existed is a question of fact. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

An individual whose initial intake interview ended when the attorney advised the individual that the law firm was not going to assist him was neither a past nor present client of the law firm but was a prospective client seeking legal help that was turned down. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients receive some protection. The issues of confidentiality and conflicts of interest are intertwined in determining whether a lawyer is disqualified from representing a client as a result of preliminary discussions with the other side. A duty of confidentiality exists and applies whenever a lawyer agrees to consider whether to take a prospective client's case. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Prospective clients should receive some, but not all, the protections given to a client because a lawyer's discussions with a prospective client are often limited in the time and depth of exploration, do not reflect full consideration of the prospective client's problems, and leave both prospective client and lawyer free (and sometimes required) to proceed no further. Weilbacher v. Taulung, 16 FSM R. 318, 321 (Kos. S. Ct. Tr. 2009).

Anything a lawyer learns during a consultation must be kept confidential and a determination of whether a lawyer-client relationship has been formed is undertaken. In determining whether this initial interview formed a client-lawyer relationship it is essential to know how much was disclosed in the initial meeting. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

It is necessary for prospective clients to reveal information to attorneys during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer wants to undertake. The attorney has a duty not to use any information learned during this initial intake even if the attorney does not proceed with representation. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Initial intakes are vital in determining if a firm can represent a client or not and receiving this information is not, in itself, enough to trigger disqualification. Disqualification should not occur unless extensive or sensitive information about the potential representation was revealed. Only if the consultation involves information that could be significantly harmful to the person who consulted the lawyer will the lawyer be disqualified from representing someone else in the matter. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

When the movant did not show that the information he told the law firm was of significant use or critical to the case and when the law firm did an effective screening job to prevent any conflict from occurring since no significantly harmful information was revealed, no conflict of interest exists and the law firm should not be disqualified, but anything the law firm did learn in the initial intake is confidential and it is under an obligation to keep it confidential. Weilbacher v. Taulung, 16 FSM R. 318, 322 (Kos. S. Ct. Tr. 2009).

Model Rule of Professional Conduct 1.9(a) prohibits an attorney who has represented a person from representing another person in a same or substantially related matter in which that person's interests are materially adverse to the former client's interests unless the former client consents after consultation. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 461 (Chk. S. Ct. App. 2009).

An attorney is not disqualified from representing the real parties in interest in a 2009 state election contest brought by a former client who he had represented in the former client's attempt to be added to the ballot for the 2006 FSM congressional race since the issues are not the same or substantially related to the attorney's former representation. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 461 (Chk. S. Ct. App. 2009).

Disqualification for an emotional interest because it causes a conflicting interference with the lawyer's exercise of public responsibility is limited to prosecutors since prosecutors are held to a higher standard. Marsolo v. Esa, 17 FSM R. 480, 484 n.1 (Chk. 2011).

Courts must view with caution any motion to disqualify opposing counsel because such motions can be misused as a harassment technique. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

Resolving conflict-of-interest questions is primarily the responsibility of the lawyer undertaking the representation, but a court may, in civil litigation, raise the question when there is reason to infer that the lawyer has neglected the responsibility. Marsolo v. Esa, 17 FSM R. 480, 484 (Chk. 2011).

When an FSM court has not previously construed an FSM ethical rule, such as the issue of standing to move to disqualify opposing counsel for violating a Model Rule which is identical or similar to a U.S. rule, it may consult U.S. sources for guidance. Marsolo v. Esa, 17 FSM R. 480, 484 n.2 (Chk. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel's disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

No sound basis is apparent for disqualifying the Chuuk Attorney General's Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office. The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A lawyer cannot represent multiple clients with conflicting or potentially conflicting interests in the same

matter unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation must include explanation of the implications of the common representation and the advantages and risks involved. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

Even though the Chuuk Attorney General's Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General's Office from representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear that the Chuuk Attorney General's Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General's Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General's brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General's representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs' favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General's Office continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General's Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter's timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

Without a former client's consent, a lawyer cannot represent another person in a matter adverse to the former client when the lawyer represented the former client in the same matter or a substantially related matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390 (Pon. 2012).

Unless the former client has consented after consultation, counsel would be disqualified from appearing in the same or a substantially related matter in which the client's interests are materially adverse to a former client's interests when an opposing party is a former client, but a lawyer who has formerly represented a client is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the previous matter and when the lawyer has not received any confidential information from the former client relating to the current matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 390-91 (Pon. 2012).

Two concerns underlie the substantial relationship test – the duty to preserve confidences and the duty of loyalty to a former client. The existence of the duty of loyalty means that the substantial relationship test is not solely concerned with the adverse use of confidential information. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since the substantial relationship test is concerned with both a lawyer's duty of confidentiality and his duty of loyalty, a lawyer who has given advice in a substantially related matter must be disqualified whether or not he has gained confidences. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Once the matters are shown to be substantially related, the former client is entitled to a conclusive presumption that confidences and secrets were imparted to the former attorney. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 n.4 (Pon. 2012).

In order to disqualify a former attorney, the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or the cause wherein the attorney previously represented him, the former client. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

When considering disqualification under the substantial relationship test, more general legal representation can be relevant to a later litigation, but only if the later litigation fairly puts in issue the entire background of the movant. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

A court must be cautious when considering a motion to disqualify counsel because of the possibility that the motion may be abused as a technique of harassment. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 391 (Pon. 2012).

Since an attorney's disqualification is in the public interest, the court cannot act contrary to that interest by permitting a party's delay in moving for disqualification to justify the continuance of a breach of legal ethics. The court has a duty, in accordance with the Model Rules of Professional Conduct, to regulate the conduct of the attorneys who practice before it, and this duty cannot be defeated by a private party's laches, although in an extreme case it may be given some weight. FSM Dev. Bank v. Ehsa, 18 FSM R. 388, 392 (Pon. 2012).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in FSM MRPC Rule 1.7. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

A lawyer cannot represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and each client consents after consultation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State's Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General's Office because the Attorney General's Office is admitting liability on the State's behalf, and imputed that liability upon counsel's client, a tenant of the State, this issue of imputing liability from the State to counsel's client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel's representation of the State would be materially adverse to his current client's interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel's motion to withdraw from his client will be denied and his notice of entry of appearance on the State's behalf will be stricken from the record as will his other filings on the State's behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. Luen Thai Fishing Venture, Ltd. v.

Pohnpei, 20 FSM R. 169, 173 n.3 (Pon. 2015).

Under Model Rule of Professional Conduct 1.11, a lawyer must not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

To be disqualified, a former government lawyer's participation must have been personal and substantial. "Indirectly involved" is not equivalent to "participated personally and substantially." Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

A former government lawyer may represent a private party when the appropriate government agency has consented during a hearing. Jacob v. Johnny, 20 FSM R. 612, 615 (Pon. 2016).

– Legal Malpractice

Although certain consequences flow from the failure to file a brief, appellees' attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney's failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

Dismissal for an attorney's inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney's inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 129-30 (App. 2008).

Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers' misbehavior. Clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

Regardless of whether the cause of action is based on negligence, breach of contract, or breach of fiduciary duty, the central purpose of the law of legal malpractice is to guard against and to remedy exploitation of the power lawyers possess over their clients' lives and property. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

An attorney has a duty to provide competent legal advice and representation. An action against an attorney for malpractice may be brought in contract or in tort because when the attorney was chargeable

with negligence or unskillfulness, his contract was violated. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the plaintiffs suing their appellate attorney are seeking to recover damages in the amount they paid their attorney to handle their appeal and are not seeking to recover the amount of the land that was at issue in the appeal, the plaintiffs' claim is one for breach of contract and not legal malpractice. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009).

When the court is not looking at negligence in handling the case or the manner in which the brief was written as there was no brief written or submitted to the FSM Supreme Court appellate division and when the attorney did not guarantee a specific result, promise, warrant or specify an outcome in the appeals case, the case is a "do nothing" case where the promisor-attorney had promised to perform a certain activity, to represent the plaintiffs in handling of an appeal, and the failure to complete that action exposed the promisor-attorney to liability for breach of contract. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644-45 (Kos. S. Ct. Tr. 2009).

The most frequent attorney error that may be the subject of a successful legal malpractice action is the attorney's failure to comply with a statute of limitation. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

– Withdrawal of Counsel

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM R. 414, 415 (Chk. S. Ct. Tr. 1996).

A court cannot allow defense counsel to withdraw so that the defendant can seek new counsel to resume trial when the trial is well into the defendant's case-in-chief and when that new counsel was not present during trial and has not heard either the prosecution's witnesses' testimony or that of the defense witnesses who have already testified. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Defense counsel cannot, in the middle of a criminal trial, precipitously accept other employment, without making the acceptance of employment conditional, commit himself to begin work "immediately," and then move for withdrawal because defense counsel is under an ethical obligation to continue as counsel until the criminal trial ends, even if that means postponement of his departure for new employment. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

When ordered to by a tribunal, defense counsel is ethically obligated to continue the representation even if good cause to withdraw is present. Should the criminal trial end in a conviction, new counsel may be obtained for sentencing. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

Denying withdrawal of counsel in the middle of a criminal trial is within the court's discretion, and as long as counsel is providing effective assistance, a criminal defendant has the choice of either continuing with that counsel or representing himself pro se. FSM v. Jano, 9 FSM R. 470a, 470b (Pon. 2000).

An attorney's motion to withdraw after advising his clients at depositions will be denied because the record contains no evidence that defendants discharged him at the depositions' end, or withdrew their authorization for him to represent them in all aspects of this proceeding; because a client's failure to contact counsel has no effect on representation especially when counsel has provided no evidence of his efforts to contact the client; because counsel's failure to secure a fee agreement between himself and his clients is not a basis for terminating representation; and because the case is ready for trial, and withdrawal of counsel at this juncture would materially compromise defendants' interests. Beal Bank S.S.B. v. Salvador, 11 FSM R. 349, 350 (Pon. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel's failure to follow the rules in withdrawing from a case can come back to haunt him. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

Counsel's merely relying on his hope that verbally informing the clerk that he was no longer counsel would be sufficient to withdraw as counsel is not enough. Atesom v. Kukkun, 11 FSM R. 400, 402 (Chk. 2003).

When a trial counselor defendant is still considered plaintiff's counsel since he has not withdrawn from the plaintiff's land matter, he should inform the plaintiff in writing of his withdrawal if he should seek to withdraw from representing the plaintiff based upon the parties' inability to work together. Ittu v. Palsis, 11 FSM R. 597, 599 (Kos. S. Ct. Tr. 2003).

When counsel who signed an answer to the amended complaint on behalf of both defendants and appeared for both defendants, only withdrew from representing one defendant, they remain counsel for the other. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 19 (Pon. 2003).

Under the Model Rules of Professional Conduct, which regulates conduct of legal counsel admitted to practice law in the State of Kosrae, Rule 1.7 prohibits a counsel from representing a client if representation of that client may be materially limited by the counsel's responsibilities to a third person or the counsel's own interests. A counsel may not represent the state in prosecuting a criminal action, if the counsel's prosecution will be materially limited by his personal relationship to the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A prosecutor's duty is to zealously and diligently prosecute criminal charges which are supported by probable cause, in the public interest, and, in his position as a public servant, to serve the public interest, consistent with the Model Rules of Professional Conduct. If the prosecutor cannot fulfill his prosecutorial duties in a particular case due to a conflict, including a personal relationship to the defendant, then the prosecutor is obligated to withdraw from the case. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

Counsel may withdraw from representation of a client if it could be accomplished without material adverse effect on the interests of the client or if: 1) the client continues conduct that the counsel believes is criminal or fraudulent, or 2) the client has used counsel's services to commit a crime or fraud; or 3) the client fails to substantially fulfill an obligation to the counsel regarding counsel's services and has been given warning (i.e. non-payment of fees, no cooperation in discovery); or 4) the client insists upon pursuing an objective that counsel believe is repugnant or imprudent; or 5) the representation will result in an unreasonable financial burden on the counsel, or 6) when other good cause exists. Wakuk v. Melander,

12 FSM R. 73, 74 (Kos. S. Ct. Tr. 2003).

A motion to withdraw as counsel will be denied when withdrawal from representation will have material adverse effect on the client's interests because the matter is pending for hearing and withdrawal is sought right before the hearing, and when counsel has failed to cite to, or provide any grounds under Model Rule of Professional Conduct 1.16 as the basis for withdrawal. Wakuk v. Melander, 12 FSM R. 73, 74-75 (Kos. S. Ct. Tr. 2003).

When ordered to do so by a tribunal, a lawyer must continue representation notwithstanding good cause for terminating the representation. Dereas v. Eas, 12 FSM R. 629, 631 (Chk. S. Ct. Tr. 2004).

That an appointed lawyer is busy is insufficient to permit his withdrawal since lawyers are generally busy and because one cause of this, the lawyer's status as a state constitutional convention delegate, is of limited duration and will end before this case progresses much further. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

That a criminal defendant is not comfortable with an appointed attorney because most of the counsel's experience was with civil cases and has asked counsel assist him in finding an attorney or attorneys with a criminal background is insufficient to permit withdrawal of counsel since every defendant facing prosecution would like an attorney with the most criminal experience possible and with more experience than the one they have got. But none are available that the court can appoint since the amount of legal talent available in the Federated States of Micronesia and admitted to practice before the FSM Supreme Court is limited. FSM v. Kansou, 13 FSM R. 157, 158 (Chk. 2005).

Defense counsel's delayed recognition that the victim was his second cousin, and his delayed notice to the court suggests that counsel's relationship to the victim does not result in a conflict of interest which would require counsel's disqualification. The court also retains its authority and discretion to deny withdrawal of counsel in the middle of a criminal proceeding. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

Since, upon termination of representation, a lawyer must surrender papers and property to which the client is entitled and may retain papers as security for a fee only to the extent permitted by law, when an attorney does not contend that the parties owe him money and that he is retaining the files as security for his fee, he has no ground for retaining those files if the parties are former clients and they have asked for the files' return. Counsel may retain copies (not the originals) of any part of the files needed for future reference. McVey v. Etscheit, 14 FSM R. 207, 211-12 (Pon. 2006).

Merely mailing a client a copy of a decision is not enough to constitute a withdrawal. Something more must be done; otherwise she therefore remains his client. McVey v. Etscheit, 14 FSM R. 207, 212 (Pon. 2006).

Withdrawal does not immunize counsel from Rule 11 sanctions. Amayo v. MJ Co., 14 FSM R. 355, 363 n.4 (Pon. 2006).

When defense counsel files an answer for all defendants and then "withdraws" from representing one of the defendants because that defendant had never consulted with or consented to defense counsel's representation, the better view is that defense counsel had never represented that defendant. Albert v. O'Sonis, 15 FSM R. 226, 230 & n.1 (Chk. S. Ct. App. 2007).

If counsel seeks to terminate representation after trial but before the appeal, steps must be taken to ensure the client's rights are protected to the extent reasonably practicable and, even then, notwithstanding good cause for withdrawal, the court may order counsel to continue representation. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

Counsel may not simply refuse to pursue an appeal, without taking any further action to protect the

client's rights. If counsel concludes that an appeal would not be meritorious, but the client still wishes to pursue the appeal, any withdrawal is conditioned upon the court's approval. Such approval may be conditioned on counsel's filing of an "Anders brief" referring to anything in the record that may arguably support appeal, whereupon the court should only grant withdrawal if it finds the appeal to be frivolous. Counsel may withdraw without the court's permission only if counsel was appointed solely to act as trial counsel. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

When the public defender is the attorney of record in this case, unless and until the court recognizes his withdrawal, neither counsel nor his office is relieved of the duty of ensuring adequate representation for the client's appeal. The trial court may leave to the appellate court any ruling on whether the Public Defender's office may withdraw its representation of an appellant and what additional steps, if any, may be required before such withdrawal is approved. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Counsel may be permitted to withdraw once they have fulfilled the conditions set by the court. Kuch v. Mori, 18 FSM R. 337, 338 (Chk. S. Ct. App. 2012).

The court does not have to permit counsel's withdrawal if the client will be left in a position where the client's interests are impaired or where there is a material adverse effect on him. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

The FSM ethical rules governing attorney conduct when seeking to withdraw provide that, except when ordered by a tribunal to continue representation notwithstanding good cause for terminating the representation, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the client's interests, or if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

When a lawyer is permitted to withdraw because maintaining the litigation has become too costly, finding substitute counsel may well prove to be difficult or even impossible. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

The court will deny an attorney's motion to withdraw for financial reasons when substitute counsel certainly cannot be found in time for the pre-judgment possession hearing or the depositions and the pre-judgment possession cannot and will not be delayed because it is statutorily an expedited proceeding. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571-72 (Kos. 2013).

An attorney's motion to withdraw as counsel may be denied when the legal issue before the court is difficult for a pro se litigant to adequately address. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Although the financial burden on counsel's law firm may constitute good cause, a court may order that he continue the representation and that he will not be permitted to withdraw because, given the statutorily-required expedited nature of the proceedings, counsel's withdrawal cannot be accomplished without material adverse effect on the defendants, but with this in mind, counsel may renew his motion to withdraw at a later date if the situation warrants. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

The withdrawal of counsel from the legal representation of a client is governed by FSM MRPC Rule 1.16. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 585 (Pon. 2014).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

FSM MRPC Rule 1.16(d) is a nonexclusive list of steps that an attorney must take to protect a client's

interests before the court will grant the withdrawal. The reasonably practicable efforts to protect a client's interests have been persuasively interpreted by our state courts to include assisting the client in obtaining substitute counsel. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

When counsel has represented a married couple who are now divorcing; when the clients are no longer cooperating or communicating with counsel nor have they paid any attorney fees; and when the husband has obtained new counsel of record who cannot represent the wife, counsel must continue to represent the wife until substitute counsel is found or counsel is otherwise released by the court since in such circumstances, the court usually requires the attorney to assist the client in finding substitute counsel or demonstrate why this is not reasonably practical to do so before granting the withdrawal. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586-87 (Pon. 2014).

An attorney's withdrawal will not be permitted when he has not submitted any evidence to show that the client wishes to terminate his legal service in the matter and there is no indication that he has met the requirements under FSM MRPC R. 1.16(d) to protect the client's interest upon withdrawal. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172 (Pon. 2015).

When, during a hearing, counsel argued against the State in defense of his attempt to depose the State's Assistant Attorney General and when counsel argues that a conflict of interest exists between the Governor and the Attorney General's Office because the Attorney General's Office is admitting liability on the State's behalf, and imputed that liability upon counsel's client, a tenant of the State, this issue of imputing liability from the State to counsel's client clearly shows a conflict of interest which would bar counsel from transferring his representation between the two defendants. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 172-73 (Pon. 2015).

When counsel's representation of the State would be materially adverse to his current client's interest and no evidence was provided that would show otherwise and when there is no proof of consent by each of the defendants after consultation, counsel's motion to withdraw from his client will be denied and his notice of entry of appearance on the State's behalf will be stricken from the record as will his other filings on the State's behalf. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 169, 173 (Pon. 2015).

ATTORNEYS' FEES

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 Federated States of Micronesia should be built. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

When there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 18 (Yap 1999).

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion for attorney's fees is unlike a motion to alter or amend a judgment. It does not imply a change in the judgment, but merely seeks what is due because of the judgment. It is, therefore, not governed by the provisions of Rule 59(e). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

When no authority has been given for the court to appoint private counsel already retained by a defendant or to require that the Public Defenders' Office compensate that private counsel at his prevailing hourly rate and when appointed counsel usually serve pro bono, the request will be denied. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the movants have not been convicted of any charges, no assets have been ordered forfeited, no payments to movant's counsel have been identified as coming from forfeitable assets, and the government has not committed itself to seeking disgorgement of counsel's fees, and the record shows that the movants have sources of income and assets that the government has not alleged are forfeitable and from which attorney's fees might be paid, it is too speculative for the court to consider whether the possible forfeiture of attorney's fees will affect an accused's right to retain counsel of his choice and to effective assistance of that counsel. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

Concerns about the affect of possible forfeiture of defense counsel's attorney's fees do not apply to a defendant who is represented by a salaried employee of the Public Defenders' Office and who is only charged with one offense and forfeiture of assets is not a penalty that the court can impose for the conviction of that offense. FSM v. Kansou, 12 FSM R. 637, 641-42 (Chk. 2004).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

– Court-Awarded

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 Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (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 Federated States of Micronesia than in the United States. Semens v. Continental Air Lines, 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 Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 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).

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 clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Any award of attorney's fees must be based upon a showing, and a judicial finding, that the amount of the fees is reasonable. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

In the absence of statutory authority there is a general presumption against attorney's fees awards, and they should not be awarded as standard practice. Bank of Guam v. Nukuto, 6 FSM R. 615, 617 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

Where attorney's fees are to be paid out of funds collected and deposited with the court, motions for fee awards will be denied without prejudice when no funds have yet been collected. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 528 (Pon. 1996).

When allowing attorney's fee awards courts have broad discretion based on a standard of reasonableness in light of the case's circumstances. A trial court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to contract or statute, and it should provide reasons on the record to explain its exercise of discretion in awarding the figure it selects. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

It is an abuse of the trial court's discretion to award attorney's fees and costs without first determining their reasonableness. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

When at the early juncture of the parties' cross motions for summary judgment it appears that the defendant's writing of bad checks may have been in bad faith or it may have been negligent, an attorney's fees award is not appropriate in the absence of a finding that defendant's conduct was vexatious or in bad faith. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

The fact that a defendant prevails in a motion for summary judgment in such a way as to defeat a significant portion of a plaintiff's claim is a fact that a court should consider relative to the plaintiff's claim for attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Attorney's fees awarded as an element of costs are not to be confused with the award of attorney's fees recoverable as a part of damages pursuant to either statute or contract. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Attorney's fees are not a part of recoverable costs under the common law. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

In fashioning a fee award, it has always been the court's function to determine what attorney's fees are reasonable and to award no more than that. When necessary, the court will reduce an attorney fee request to an amount it determines reasonable instead of denying any fee recovery at all. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

An attorneys' fee award of $120 per hour is reasonable when there have been other fee awards of $120 per hour in the FSM, when the attorneys' work was of high quality, the case was a difficult one, and novel issues were presented and the relief sought was ultimately achieved. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 456 (Chk. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or

contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The trial court has no jurisdiction to award attorney's fees as a sanction for frivolous appeals under FSM Appellate Rule 38. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The general rule is that absent bad faith, a plaintiff is entitled to attorney's fees in a collection case in an amount not to exceed 15% of the principal and interest of the amount sought to be collected. The 15% is not a guaranteed minimum by any means, but it does operate, in the absence of bad faith on the part of the party against whom the fees are sought, as a ceiling. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

A client may contract with a firm of attorneys for specified legal services, and commit itself to pay the amounts billed in accordance with the terms of the contract. But with respect to the court's determination of a reasonable fee amount, what the client agrees to pay is irrelevant, since the reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

When awarding attorney's fees, a court has broad discretion based on a standard of reasonableness in light of the case's circumstances. A fee application must be based on detailed supporting documentation showing the date, the work done, and the time spent on each service provided. The court must determine the amount of a reasonable fee and award no more than that. Where required, the court will reduce the amount of the award sought as opposed to denying the request altogether. The reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum

certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

A trial court retains jurisdiction to issue an order assessing fees and costs even if issued after an appeal has been filed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing plaintiff is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 n.1 (Chk. 2005).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

The court is without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees, so that when the plaintiff has not presented any evidence of a statutory or contractual provision which would allow him to recover his attorney's fees from the defendant, his request for the recovery of attorneys' is without merit and must be denied. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When a request for attorney's fees contained no points and authorities to support its request and was not argued at the hearing, the request is deemed waived and abandoned. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

Attorney's fees are not part of recoverable costs under the common law. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

A party's statement that the lawyer should assume responsibility for technical and legal tactical issues and its assertion that it was not involved in the discovery disputes, only its counsel was, is not enough for an appellate court to say the trial court abused its discretion in not applying the attorney's fees sanctions against the party's former attorney himself rather than against the party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

The court will not award attorney's fees of $200 an hour, counsel's usual hourly rate on Guam because FSM court awards of reasonable attorney's fees are based on the customary fee in the locality in which the case is tried. One hundred ten to one hundred twenty dollars an hour would be in the range reasonable for a case tried on Pohnpei. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

The court's power to award attorney's fees for vexatious conduct, will usually be exercised to include an attorney's fees award as a part of damages in a final judgment, not to impose sanctions at a pretrial stage. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The usual method of determining reasonable attorney's fees awards is based on the fair hourly rate in the locality where the case was tried. Since any attorney's fees award 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. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

No attorneys' fees can be awarded to plaintiffs that have acted pro se. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Attorney fee awards are generally limited to those authorized either by statute or contract. Otherwise, parties bear their own attorney's fees. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

The party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

An appropriate fee consists of reasonable charges for reasonable services. Thus, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client since this type of data, without more, does not provide the court with sufficient information as to their reasonableness – a matter which cannot be determined on the basis of conjecture or conclusions of the attorney seeking the fees. Rather the fee request must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor. Because of the importance of these factors, it is incumbent upon the requester to present detailed records maintained during the course of the litigation concerning facts and computations upon which the charges are predicated. Without itemization, a court will not approve any attorney fee claims. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer's affidavit that the summary was correct, is inadequate to support an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A client may contract with an attorney for specified legal services and commit itself to pay the amounts billed in accordance with the contract's terms, but what the client has agreed to pay is not relevant to the court's determination of a reasonable fee since the court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client. This is because the entitlement to a reasonable attorneys' fees award is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A class action fee award should not be based solely on a percentage of the recovery, since the court should consider several other factors in order to decide what is an appropriate fee. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place

because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees is reasonable, the court must require the submission of 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, so that the opposing party will have notice and an opportunity to challenge the reasonableness of the fee claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

In determining an attorney fee award's reasonableness, the appellate division has considered two different, but similar sets of factors. One involving twelve factors, is drawn from civil rights caselaw, and the other, involving eight factors, is drawn from the FSM Model Rules of Professional Conduct Rule 1.5(a) and is thus used to determine whether a fee is unreasonable and unethical. The only real differences between these two tests is that the twelve-factor test includes consideration of the case's undesirability and awards in similar cases and the eight-factor test makes consideration of whether the acceptance of the particular employment will preclude other employment by the lawyer dependent upon whether that preclusion was apparent to the client and limits the fee to the customary fee in the case's locality. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The twelve-factor attorney-fee test considers: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal service properly; 4) the preclusion of other employment by the attorney due to acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the attorneys' experience, reputation, and ability; 10) the case's "undesirability"; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The whether-the-fee-is-fixed-or-contingent factor in the twelve-factor and eight-factor tests, does not contradict the court's statement that a reasonable attorney fee award is determined without reference to any fee agreement's terms because this factor considers the risk the attorney undertook that he might not have a fee to collect – that is, whether the fee was contingent – not what the actual terms of the (contingent or fixed) agreement were. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 n.4 (Yap 2007).

The eight-factor attorney-fee test considers: 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

For an attorney fee award, the fair hourly rate in the locality is used, and the starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. This is the lodestar approach. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

A difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case. The court can guard against this by disallowing hours deemed unnecessary or performed in a grossly inefficient fashion. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 n.5 (Yap 2007).

It does not follow that the time an attorney actually expended is the amount of time reasonably expended. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Redundant, or otherwise unnecessary hours must be excluded from the amount claimed because courts are charged with deducting for redundant hours. Redundant hours generally occur where more than one attorney represented a client. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Time devoted to intra-office consultations between attorneys that duplicated the other's time will be reduced. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Hours spent researching governmental liability for navigational aids will be disallowed when no governmental entity was ever a party to the case or ever held liable because fees are to be recovered only from the party against whom liability has been established, and only for hours reasonably devoted to establishing that liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66-67 (Yap 2007).

Defendants who are found liable are not required to compensate the plaintiffs for attorney hours spent against others who were not found liable. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

In determining a reasonable attorney's fees award, time devoted to travel is not included. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Time spent on review of "unrelated" cases, which also involved oil spill damage and were thus relevant, will not be disallowed and whether the lead plaintiffs in a class action can receive "incentive" payments, although an issue not tried, is one which may eventually need to be addressed during any fairness hearing on the as yet unproposed distribution plan so those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Since different rates of compensation are awarded dependent on the litigation task performed and not strictly according to the position of the person performing it, when most of the preparation of the fee request was in the nature of bookkeeping or accounting, the court will reduce the 17.7 hours at the attorney fee rate to 2 hours at the attorney fee rate to achieve the same result instead of having to determine what should be a proper rate for the bookkeeping tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67-68 (Yap 2007).

Time spent conferring between attorneys and to respond to a plaintiff's inquiry concerning this case's status after it had been submitted to the court and the parties were awaiting the court's decision, were essentially conferences about whether the court had issued a decision yet and thus unnecessary. Those hours will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

Since settlement discussions that took place before the end of trial may have helped to materially advance the litigation, those hours will not be disallowed except for those hours that appear excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the punitive damages issue was not tried and appears to apply only to a former party against

whom no liability was found, time spent on that claim will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the time spent on the issue of piercing the corporate veil was not tried, but the research advanced the litigation and was needed to frame litigation strategy, those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When PCB contamination claims were not tried and were abandoned early on after the plaintiffs determined that the facts did not warrant such a claim, the hours devoted to PCB claims will be disallowed since a PCB contamination claim is factually different from an oil contamination claim. Where the claims do not share a common basis in fact or are not legally related, the court need not award fees if the claims prove unsuccessful. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When attorneys invoiced hours for conferring with one or more other attorneys in the same firm, the duplicate hours will be disallowed and when the other law firm's lead attorney invoiced time for conferencing with an attorney from the first firm for which that attorney also invoiced time, the first firm's time will be reduced by 50%. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

When an attorney invoiced a half hour for delivering case materials for the lead plaintiff to a hotel, this is delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of whether an attorney preformed the task. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

While a party may legitimately oppose the admission *pro hac vice* of opposing counsel, when the time spent on opposing the admission was excessive and without any sound basis, the court will disallow the hours spent on this. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent on an attorney's education so that he may competently handle the case may be excluded from an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

The hours an attorney spent, not on the attorney's continuing legal education, but on research into scientific areas about which the defendants' experts would testify at trial, will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent to warn the attorney's clients not to comment to the press will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Administrative work is considered part of overhead, and the court will disallow hours devoted to administrative, instead of legal, tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Finding and retaining co-counsel and making his fee arrangements or the hiring of needed staff is not compensable as attorneys' fees even if needed only to prosecute a particular case. When the search for co-counsel ultimately resulted in the retention of eminently qualified co-counsel whose participation materially advanced the litigation, those hours will be reduced since non-legal tasks must be compensated at lower rates or the hours reduced to achieve the same results. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70-71 (Yap 2007).

The essentially bookkeeping portion of the fee request will not be computed at the full attorney fee rate, but the hours that appear to be legal work will. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Compensation for time and expenses in a state court can only be sought (if at all possible) in that state court. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on anthropological research and on research into the ability of Yap municipalities to sue materially advanced the litigation and was necessary for the plaintiffs to frame their pleadings and arguments concerning the nature of the plaintiffs' rights to the resources affected by the oil spill and the hours spent do not appear excessive, they will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on investigation into Compact of Free Association, FSM limitation of liability legislation, FSM maritime lien statute, P & I coverage is necessary background information for a proceeding in admiralty *in rem*, and materially advanced the litigation, it will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Time spent on work done to establish the liability of one against whom no liability was found will be disallowed and time spent on professional responsibility research that is unexplained, will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

There is no basis in law or fact to require the defendants to compensate the plaintiffs for drafting or lobbying for legislation even if such legislation was to assist the plaintiffs by legislative means. Therefore all hours devoted to legislative work will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Although the court can take the across-the-board percentage reduction of the attorneys' invoiced time approach to eliminate redundant, excessive, and unnecessary hours if the attorney fee records are voluminous, when the attorney fee records, while voluminous, are not so large as to preclude the court's entry-by-entry examination, it will not. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When a law firm has attorneys who are admitted before the FSM Supreme Court and the lead attorney has an office in the FSM, the attorneys must expect to be considered local FSM attorneys whose fee award would be measured by the prevailing local rates and whose legal expertise must also be considered as available in the FSM. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When the one private attorney in Yap now averages $110 per hour and when, in 2002, $120 per hour was found to be a reasonable fee for a difficult case in which novel issues were presented and the relief sought was ultimately achieved, $125 per hour is an appropriate lodestar rate in Yap for this case. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

In determining a fee award, the plaintiffs' success is to be measured qualitatively as well as quantitatively so that when the plaintiffs succeeded on their central claim – damage to Yap's natural marine resources – their attorneys' fees award will not be reduced because of their initial, overly-optimistic estimation of part of their damages claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity, amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

When one co-counsel shouldered the expense of funding the litigation and thus bore the bulk of the risk involved and when that co-counsel provided needed and otherwise unavailable (in the FSM or the Western Pacific) legal expertise, that co-counsel's time should be enhanced by a multiplier. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

When an attorney's fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

Attorney's fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270, 275-76 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. George, 15 FSM R. 270, 276 (Kos. S. Ct. Tr. 2007).

When an attorney's fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

To determine the legal fees' reasonableness, the court would need evidence of the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor because an appropriate fee consists of reasonable charges for reasonable services. When there is nothing, other than the client's affirmation of debt while he was seeking counsel for a pending criminal appeal, to prove the reasonable value of the services rendered, the affirmation is insufficient. Merely because a client affirmed that a specified amount was due is not enough to prove the services' reasonable value. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Attorney's fees will not be awarded to the plaintiff insurer when the conversion arose as part of the insurer's agents' efforts to address customer concerns about the time it took for policy holders to receive

their checks for loans taken out on their policies or for their policies' partial or full surrender value when a substantial amount of the cash obtained from the premium checks was distributed to policy holders and when, once the problem was identified, the current agent was cooperative in helping the insurer determine what sums were missing. Nor will attorney's fees be awarded against the business that cashed the checks, since it acted in reliance on the insurer's agents' representations when its employees cashed the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

A court may award attorney's fees against a party when that party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. Jano v. Fujita, 16 FSM R. 502, 503 (Pon. 2009).

When the plaintiff failed to present at trial any evidence on two elements of his causes of action; when the plaintiff alone testified and his testimony itself was speculative, conclusory, and lacking in foundation; when given the testimony's overall lack of credibility, as well as the lack of other evidence presented at trial to sustain the plaintiff's burden of proof, the court can conclude that the plaintiff brought the lawsuit vexatiously and in bad faith, and, accordingly, the defendant may be awarded his attorney's fees incurred in the course of the lawsuit. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. For a case tried on Pohnpei, the court will award fees on the basis of $125 an hour. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

When a review of the billing attachment reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at $125 an hour for a total of $450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

A Guam gross revenue tax or a GRT equivalent cannot be included in a court-awarded attorney's fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 102 (Yap 2010).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing party is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees since attorneys' fees are not costs under Rule 54(d) or the common law. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant was successful in having an action against him in the FSM Supreme Court dismissed without prejudice to any Yap State Court adjudication on the merits of the plaintiff's claims against him, he is not entitled to an attorney fee award under FSM Civil Procedure Rule 54(d). When he does not seek any other expenses that might be considered costs and since he does not cite a statutory or contractual provision that would entitle him to an attorney's fee award, his attorney's fee application must be denied. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant's dismissal was without prejudice, if the plaintiff pursues the matter in the Yap State Court some of the defendant's fees may be recoverable there if he prevails on the merits since some of his attorney's work involved the merits, which the FSM Supreme Court did not consider, but, on the other hand, if the plaintiff were to prevail in the state court on the merits, an award of fees in the FSM Supreme Court might then be inequitable. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours that were duplicative, unproductive, excessive, or otherwise unnecessary. Unnecessary hours and expenses are not compensable or awardable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

A court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to statute. The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

One difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case, but the court can guard against this by disallowing hours deemed unnecessary. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Pro se litigants are not entitled to attorney's fees awards. Jacob v. Johnny, 18 FSM R. 226, 234 n.2 (Pon. 2012).

It is error for a trial court to make a $5,000 award for attorney's fees without citing a contractual provision or a statute that would authorize such an award, especially when the FSM civil rights statute cited in the plaintiff's complaint would not apply to the case since the case is not a civil rights case but is a property dispute. Phillip v. Moses, 18 FSM R. 247, 252 (Chk. S. Ct. App. 2012).

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A prevailing party is not automatically entitled to attorneys' fees because the court is generally without authority to award such fees in the absence of a specific statute or contractual provision allowing recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Each party normally bears its own attorneys' fees. This flexible rule allows for the imposition of attorneys' fees when a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. In the absence of a statute to the contrary, a court will normally proceed on the assumption that the parties will bear their own attorney's fees. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

In the absence of statutory authority, there is a general presumption against attorney fees awards and they should not be awarded as standard practice. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Generally, a court will award attorney's fees only when such fees are provided for by statute or in a contract between the parties. But if the defendant acts vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices, the trial court may award attorney's fees to the prevailing party even when no statute or contractual provision authorizes attorney's fees. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

The mere non-payment of a judgment does not constitute the vexatiousness or bad faith needed to entitle a judgment creditor to an attorney's fees and costs award. There must be something more. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

A party seeking an attorney's fee award must submit supporting documentation showing the attorney's hourly rate, the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

When the record is adequate to show that the judgments did not go unpaid because of the appellees' bad faith or vexatious behavior, the trial court's denials of attorney's fees requests may be affirmed. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Even though no opposition was filed to an appellate bill of costs, it still must be considered by a judge when it asks for attorney's fees since attorney's fees can only be determined by a judge, not a clerk. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied because attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied since attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

The court, when making an attorney's fee award, can only award reasonable attorney's fees based on the customary fee in the locality where the case is, or will be tried. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The FSM Development Bank may recover an attorney's fee award under Rule 37. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

– Court-Awarded – Common Fund

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 Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270, 275-76 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

While the lodestar method, which multiples the number of attorney-work hours reasonably expended by an hourly rate appropriate for the FSM and the lawyer's experience, is the proper method in statutory (or in contractual) fee-shifting cases, the percentage-of-recovery method is generally used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate the counsel responsible for generating the fund, although it is within a trial court's discretion to use the lodestar instead of the percentage-of-recovery method to calculate attorney's fees in a common fund case. When the percentage-of-recovery method is used, the court must specify the percentage it has utilized in determining the fee award. There is no set standard, however, for determining a reasonable percentage. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203-04 (Yap 2010).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The trial court in a class-action settlement is not bound by the parties' agreement as to the amount of attorney fees. A thorough judicial review of fee applications is required in all class action settlements. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

In the context of a class-action settlement, when determining whether plaintiffs' counsel is in fact

entitled to fees, and if so, in what amount, the court must be sensitive to the potential conflict of interest between plaintiffs and their counsel, and must be particularly careful to insure that the ultimate division of funds is fair to absent class members. This is because, even if the court finds, under Rule 23(e), that the settlement is fair and reasonable to absent class members, the court still has an unbending duty to ensure that counsel is not unreasonably benefited by the award of an exorbitant fee, and therefore must scrutinize attorney fee applications with a jealous regard for the rights of those who are interested in the class action settlement fund since the divergence in financial incentives always creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees. Thus, under Rule 23(e), a trial court must scrutinize any fee agreement that would be enforced as part of the agreement, because those agreements necessarily put counsel and clients in an adversary relationship. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The court's fee application review must consider not only just compensation for attorneys but also the necessity to protect the rights of the class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

In a common fund case where the attorneys' fees and the clients' award stem from the same source and the fees are based on a percentage amount of the clients' settlement, the trial court should consider: 1) the size of the fund and the number of persons benefitted; 2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the litigation's complexity and duration; 5) the risk of nonpayment; 6) the amount of time plaintiffs' counsel devoted to the case; and 7) the awards in similar cases. These factors need not be applied in a formulaic way since each case is different. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The brevity of the litigation before settlement (for instance, a case in which no formal discovery has been conducted before a quick settlement) would require a reduction in attorney fees. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Courts generally use lodestar calculations to "cross-check" percentage-of-recovery fee awards. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

– Court-Awarded – Contractual

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by 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. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

In collection cases, creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

An attorney's fee must be reasonable, and the court must make such a finding. Except in unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to

exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103-04 (Kos. 2001).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of a plaintiff's claim for attorney's fees and costs. Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which compensation is claimed. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of the plaintiff's claim for attorney's fees and costs. Any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on 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. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court will adopt the 15% limitation established in Bank of Hawaii v. Jack, and when the total amount of the plaintiff's attorney fees claim is excessive, but the plaintiff's claim for trial preparation, representation at trial and preparation of the written summation is reasonable, a 15% attorney fees award is reasonable and just. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness, and it is especially important for the court to scrutinize carefully and to strictly construe contractual provisions which relate to the payment of attorney's fees. LPP Mortgage Ltd. v. Maras, 12

FSM R. 112, 113 (Chk. 2003).

The court is the final arbiter of whether an attorney fee award it orders is reasonable. Merely because an attorney has billed his client for a certain amount does not make that amount reasonable for a court-ordered award. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Attorney's fees that are awarded on the basis of contract become part of the plaintiffs' damages in its case. When the one party's wrongful act has involved him in litigation with another, and the other must pursue a legal remedy, then the attorney's fees so incurred should be treated as damages that flow from the original wrongful act. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

Attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Even when attorney's fees awards are made pursuant to contract or statute, a trial court has an obligation to see that any award it approves is reasonable, and it is an abuse of the trial court's discretion to award fees without first determining their reasonableness. The court must carefully scrutinize and strictly construe contractual provisions relating to the payment of attorney's fees. The court is the final arbiter of whether a court-ordered attorney fee award is reasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. Fifteen percent is not an amount an attorney is automatically entitled to as a fee in debt collection case. It is the upper limit, or ceiling, on what the court can consider to be reasonable and beyond which a fee is presumed to be unreasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8 (App. 2006).

A contract's intended third-party beneficiary can recover attorney's fees under a contract providing for attorney's fees if it has to sue to enforce its third-party beneficiary rights and prevails. Similarly, a prevailing party can recover attorney's fees from an intended third-party beneficiary litigant if that beneficiary could have recovered attorney's fees from that party under the contract. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When it was the appellees' contract with another that provided for attorney's fees for a successful litigant and the appellant was not an intended beneficiary of that agreement; and when the trial court declined to shift the attorney fee burden to the appellant based on its vexatious conduct, no contract or statute authorized the fees the appellant was awarded. When the trial court, in awarding these attorney's fees after the trial on damages, made no finding that attorney's fees were damages in the contemplation of both parties as the probable result of the breach at the time they made the contract, the fees could not have been awarded as consequential damages. The fee award thus must be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer's affidavit that the summary was correct is inadequate to support an attorney fee award, and the party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

The starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Redundant, or otherwise unnecessary hours must be excluded from the amount of attorneys' fees claimed because courts are charged with deducting redundant hours, which generally occur when more than one attorney represents a client. Time devoted to intra-office consultations between attorneys, which duplicated the other's time will be reduced. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Since the test for attorney fee compensation is whether a given step was necessary to attain the relief afforded, the court will disallow the hours spent negotiating a lien release with an attorney who did not represent any party in the litigation, concerning a matter unrelated to obtaining a money judgment against the defendants in the case. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

File maintenance and reorganization and an intra-office conference with staff about it is administrative work. Administrative work is considered part of overhead and attorney time devoted to administrative, instead of legal, tasks will be disallowed. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Going to the airport to find a passenger to hand-carry a package to Chuuk or running to find someone to hand-carry documents to Chuuk for filing and the like is courier or delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of whether an attorney performs the task. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Unexplained time that does not appear to be related to the relief sought or attained by the litigation will be disallowed from an attorney fee request. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470-71 (Chk. 2009).

An award of reasonable attorney's fees to the prevailing party is based on the customary fee in the locality in which the case is tried. Thus when the case was filed in and decided in Chuuk and the customary fee in Chuuk currently ranges from $100 to $125 an hour, the court will award attorneys' fees at

$125 per hour. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

A "business privilege tax" that is part of the cost of being in business on Guam and is either part of a law firm's overhead, which cannot be taxed as a cost, or an increase in or part of the attorney's hourly rate and thus already considered under the reasonable attorney fee award. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Even if a law firm client has agreed to compensate the law firm for its gross receipts tax liability on income received from the client, the court will not award it because what the client has agreed to pay is not relevant to the court's determination of a reasonable fee. The court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client since the entitlement to a reasonable attorneys' fees award is the client's, not his attorney's, and the amount the client actually pays his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

– Court-Awarded – Private Attorney General

The "private attorney general" theory for an award of attorney's fees whereby a successful party is awarded attorney's fees when it has vindicated an important public right that required private enforcement and benefitted a large number of people has never been applied in the FSM. Damarlane v. United States, 8 FSM R. 45, 55 (App. 1997).

The "private attorney general" theory has never been judicially applied in the FSM, nor has it been judicially prohibited. Udot Municipality v. FSM, 10 FSM R. 354, 361 (Chk. 2001).

When the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance and the cost to prevailing party appears to outweigh the potential benefits it achieved, the case is a suitable one for the equitable application of the "private attorney general" doctrine and it is proper to adopt the principle. Udot Municipality v. FSM, 10 FSM R. 354, 361-62 (Chk. 2001).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." FSM v. Udot Municipality, 12 FSM R. 29, 36 n.4 (App. 2003).

The private attorney general theory should be available for prevailing litigants to recover their attorney fees in bringing an action if they meet the criteria because when government officials' acts are contrary to the Constitution, and these same officials have access to the significant resources of the national government to defend their actions, there is a danger that the courts may become inaccessible to members of the public. The government does have finite and scarce resources, but these are not wasted on litigation that benefits the public interest and vindicates important societal rights. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The standards for application of the private attorney general theory are rigorous, and only in cases where a litigant is successful in pursuing a case that confers a substantial benefit on the public will the government be liable for attorney fees. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The private attorney general theory should apply in the FSM, provided that the criteria are strictly met. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

A party seeking attorney's fees under the private attorney general theory must demonstrate that it vindicated a right that benefits a large number of people, that the right sought to be enforced required

private enforcement, and it must prove that the right is of societal importance. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

A prevailing municipality may recover its attorney's fees under a private attorney general theory when the case addressed significant constitutional and other issues of public importance; when the whole population of the FSM benefitted from requiring greater accountability in the use of public project funds and requiring the Congress to legislate within constitutional limitations, especially when the legislation involves appropriation of large sums of funds intended for public projects; and when the case required private enforcement, as municipal governments in the FSM do not have the resources or facilities to maintain legal offices on the same scale as the state or national governments and, when the rights of a municipality's residents are affected, they must spend municipal funds to hire a private attorney. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

Although a case of first impression, equity favors the party that has successfully established all of the factors to meet the test for application of the private attorney general theory. When it has undertaken to litigate an important case of vital interest to the nation and has expended resources which are substantial in proportion to its gain, it should be reimbursed for its reasonable expenses in litigating. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The equitable private attorney general doctrine allows a prevailing party to recover attorneys' fees where the party vindicates an important right that affects the public interest, confers a significant benefit upon the general public or a large number of people, and requires private enforcement. FSM v. Udot Municipality, 12 FSM R. 622, 624 n.1 (App. 2004).

When the appellate court has already held that the private attorney general doctrine will apply in the FSM, provided that the criteria are strictly met and when it has concluded that the criteria were met and upheld the trial court's award of attorneys' fees based on the private attorney general theory, and when the appellate level dealt with the same case, criteria, and circumstances as the trial court, the appellate court may conclude that attorney's fees for the appeal should be awarded based on the private attorney general theory and remand the case to the trial court for a determination of the amount of attorney's fees and costs to be awarded. A trial court attorney's fees award based on the private attorney general theory would be diminished if the party could not also defend the case at the appellate level. FSM v. Udot Municipality, 12 FSM R. 622, 624-25 (App. 2004).

The general rule is that when there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. One exception to this rule is the private attorney general theory. A party seeking attorney's fees under the private attorney general theory must demonstrate that it has vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. The private attorney general theory applies in the FSM, provided that these criteria are strictly met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is

before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

An attorney's fees award under a private attorney general theory can only be made, if at all, at the litigation's conclusion. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161-62 (Yap 2007).

The private attorney-general doctrine makes no distinction in the award of attorney's fees based upon the overall amount of damages that are awarded, nor does it differentiate between an award of monetary damages from injunctive relief. Attorney's fees not otherwise awardable, may be awarded under the private attorney general doctrine only when the lawsuit has met certain requirements, including vindicating rights that benefit a large number of people, when the private parties were required to file suit to enforce those rights because a government authority was unable to do so, and when the rights enforced are of great social importance. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When private citizens are pursuing purely civil claims – the tort of negligence – against other private citizens and the Yap government could not have undertaken any action to vindicate the plaintiffs' rights pursued, an award of attorney's fees under the private attorney-general doctrine is erroneous. It is thus an abuse of discretion for the trial court to award attorney's fees and costs under the private attorney-general doctrine in a case in which the government could not have taken any action to vindicate the rights of the people affected. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

A private party cannot seek an award under a private attorney general theory when it is suing for purely civil claims involving money damages that only vindicate the rights of just one plaintiff. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A party will not be entitled to a private attorney general fee and cost award when it is a private party suing for purely civil claims involving money damages which will only vindicate the rights of just one plaintiff, itself. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The elements for a private attorney general fee award are that the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

No award of attorney's fees and costs can be made under the private attorney general principle when the plaintiff has not yet prevailed in its pursuit of the declaratory judgment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Court-Awarded – Statutory

Because the social and economic situation in the Federated States of Micronesia 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 Federated States of Micronesia. 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 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).

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 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 hourly rate. Tolenoa v. Kosrae, 3 FSM R. 167, 173 (App. 1987).

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 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).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 134 (App. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

In determining the amount of attorney's fees to award the prevailing party in a civil rights suit the court should consider United States civil rights decisions without being bound by them. Davis v. Kutta, 8 FSM R. 218, 221 (Chk. 1997).

An hourly 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. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

In determining a reasonable attorney's fees award, the fair hourly rate in the locality is used; time devoted to travel is not included; and time records for intra-office consultations between attorneys, which duplicated the others time were reduced. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 (Chk. 1999).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

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).

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. 123, 124 (Chk. 2001).

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, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the plaintiff has requested supplementary attorney's fees and the defendant has not objected and when this goes to an issue that is not subject to the pending appeal, the trial court has jurisdiction to grant the motion. Estate of Mori v. Chuuk, 12 FSM R. 3, 13 (Chk. 2003).

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. The usual method is to award fees based on the 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 times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a continency 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).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39-40 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

A fee application must be supported by detailed supporting documentation showing the date, the work done, and the amount time spent on each service. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

In Micronesia, an attorney's fee of $120 an hour has been found to be reasonable where there have been other fee awards of that amount and the attorney's work was of high quality, the case was a difficult one, and novel issues were presented. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the court is unaware of any FSM case in which a fee of greater than $120 an hour was awarded and no authority has been provided to support the contention that in the current economic climate of the FSM, an attorney's fee of more than twice the hourly rate previously recognized as reasonable may be found to be reasonable, the fee award will be reduced to $120 an hour. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

An hourly fee of $75 is reasonable and is well within the limits that have been recognized in the FSM. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Even though the parties stipulated to the amount of attorney's fees and to the judgment the court must still make a determination of reasonableness for fees to be entered in a judgment. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 170 (Kos. 2005).

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).

An hourly rate of $120 is a reasonable hourly rate for trial time in civil rights action, and a rate of $100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of $100 an hour for that time instead of the $120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

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).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that

the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

There are sound policy reasons for a rule denying a pro se litigant, whether a lay person or an attorney, an attorney fee award: 1) the statutory language makes any other construction unlikely because the phrase "reasonable attorney's fees" presupposes the existence of an attorney-client relationship; 2) a pro se litigant (whether a lawyer or a lay person) will not have the expense of compensating another for legal representation; 3) if the FSM Congress had intended that a pro se litigant be granted a fee award, it could easily have said so, but it did not; 4) awarding "attorney's fees" to pro se litigants may unwholesomely encourage the creation of a "cottage industry" of filing lawsuits with little merit in the hope of a fee award; 5) attorneys representing themselves might be tempted to protract litigation for their own financial betterment; 6) it would discourage pro se litigants from employing an independent and detached professional who is not emotionally involved in the case and who could make sure reason, not emotion, dictated the litigation strategy and tactics; and 7) the public would see the FSM justice system as unfair and one-sided if prevailing pro se lawyer plaintiffs were treated more favorably and are eligible to receive an additional award beyond what a pro se lay person would be granted. Berman v. Pohnpei, 17 FSM R. 360, 375-76 (App. 2011).

Granting pro se non-lawyers an attorney fee award would raise the concern of the difficulty in valuing the non-attorney's time spent performing legal services, *i.e.*, the problem of overcompensating pro se litigants for excessive hours spent thrashing about on uncomplicated matters. Berman v. Pohnpei, 17 FSM R. 360, 375 n.6 (App. 2011).

An attorney's fee award should not be made to pro se litigants regardless of whether they are lawyers or lay persons. Berman v. Pohnpei, 17 FSM R. 360, 376 (App. 2011).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An $100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive

and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

Nevertheless, that a plaintiff has once established prevailing party status does not make all later work compensable. Compensability is subject to several limitations. These limitations are: 1) the fee award should take into account the plaintiff's success in the case as a whole; 2) an earlier established prevailing party status extends to post judgment work only if it is a necessary adjunct to the initial litigation, and 3) plaintiffs cannot over-litigate. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

Postjudgment litigation, like all work under the fee-shifting statutes, must be reasonable in degree, and in analyzing a fee request for protracted litigation, it is helpful to divide the time period into phases. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The court determines what is a reasonable fee without reference to any fee agreement between the client and the attorney and without reference to what the attorney is actually paid. This determination is based on the customary fee in the locality in which the case is tried. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

$100 an hour rate is reasonable for an attorney's fee award in a civil rights case. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

– Paid by Client

A client is free to contract with counsel along any lines reasonable under FSM MRPC Rule 1.5, and such a fee, if it is reasonable, is enforceable against the client regardless of the fee awarded by the court. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

The first step in resolving a fee dispute between an attorney and a former client is to consult the written fee agreement between the parties, if there is one. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court.

Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

When an attorney is recovering his fees under the contract's terms and not under quantum meruit, he may enforce a common law charging lien in the original case instead of having to seek his fees in a separate lawsuit. Generally, an attorney is entitled to a common law lien for his fees upon his client's cause of action and the funds it recovers. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

An attorney's charging lien is not created by statute, but has its origin in the common law, and is governed by equitable principles and is based on the equitable doctrine that an attorney should be paid out of the proceeds of the judgment secured by that attorney. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

A counsel's fee must be reasonable. The Rules strongly suggest that a fee arrangement be made in writing and given to the client. This makes the fee arrangement clear and reduces the possibility of confusion. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Rules allow a counsel to require advance payment of a fee by the client, but the counsel is required to return any portion which has not been earned. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

In order for a law firm to prevail on a summary judgment motion on an account-stated claim for attorney's fees, it has to show that, as a matter of law, the defendant personally was the client for whom all the legal services were performed or that he had agreed to pay for all such services rendered. But that does not end the inquiry. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although a written agreement may provide for a specified attorney fee, the courts may inquire into the

reasonableness of the fee. Thus, even when enforcing a fee contract, the attorney's fee must still be reasonable or the court may reduce it because the fee charged under the fee contract is always subject to reduction by the court in the exercise of a supervisory power over lawyers. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Just like any plaintiff, any party seeking attorney's fees, including a plaintiff law firm suing for the fees it claims to have earned, always bears the burden of providing sufficient evidence to prove its claim. More must be presented than bills issued to the client (or a mere compilation of hours multiplied by a fixed hourly rate) since this type of data does not provide the court with enough information about their reasonableness – a matter which the court cannot determine on the basis of conjecture or conclusions of the attorney seeking the fees. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A court may order the refund of an unearned portion of any retainer fee, even a fee designated as "nonrefundable." Nonrefundable retainers are disfavored on public policy grounds. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The civil rights statute itself does not interfere with the enforceability of an attorney-client fee contract, even one such as an hourly rate agreement. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Rule 1.5(b) of the FSM-adopted Model Rules of Professional Conduct states a preference for written representation agreements. Damarlane v. Damarlane, 19 FSM R. 519, 523 n.2 (Pon. 2014).

Since, when interpreting the meaning of the ambiguous term "share of the costs," the court will look to the course of performance between the parties and since throughout the course of attorney's representation and for more than a decade since, the client did not offer the attorney any compensation and the attorney did not demand compensation until the clients' unrelated activities raised her ire, the court may infer that, based on this course of performance between the parties, the client's share of the costs under the 1991 verbal contract is zero dollars. Damarlane v. Damarlane, 19 FSM R. 519, 525 (Pon. 2014).

– Paid by Client – Contingent

A contingency fee, like any attorney's fee, must meet the requirements of Rule 1.5 of the Model Rules of Professional Conduct, which provides that a lawyer's fee shall be reasonable. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

A contingent fee agreement shall be in writing and state the method by which the fee is to be determined, and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome and, if there is a recovery, showing the remittance to the client and the method of

determination. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

Contingency fees are prohibited in both domestic relations and criminal matters. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contingent fee contracts, with some exceptions, are acceptable in the FSM. A contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Courts should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties. Nevertheless, an attorney's fee must still be reasonable or the court may reduce it. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When a written fee agreement, freely negotiated between competent and knowledgeable parties, does not require the attorney to preform any work after judgment is entered, and expressly states that the attorney's fee is "20% of the gross amount henceforth collected by the client," not 20% of the gross amount collected by the attorney, and when the attorney has performed all of the acts that his contract required of him, the attorney is entitled to compensation according to the contract's terms. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496-97 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

While a continency 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).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity, amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Contingent fee contracts are, with some exceptions, acceptable in the FSM since a contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

ATTORNEYS GENERAL

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and

the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Because the Office of the Chuuk Attorney General is not a constitutional officer but rather is a principal officer of the executive and advisor to the governor and serves at his pleasure the Chuuk Attorney General cannot prosecute the governor. That would be the constitutional responsibility of the Independent Counsel. In re Legislative Subpoena, 7 FSM R. 259, 260 (Chk. S. Ct. Tr. 1995).

The governor does not have free rein to use the Attorney General's Office to litigate private matters outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM R. 259, 261 (Chk. S. Ct. Tr. 1995).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 92-93 (Pon. 1997).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Based on the traditional state jurisdiction over matters of domestic relations and on the applicable statutory provisions' language and history, a proceeding for enforcement of a foreign support order is properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and for the same reasons, these cases are properly prosecuted by the Pohnpei Attorney General's office, rather than by the FSM Attorney General's office. Villazon v. Mafnas, 11 FSM R. 309, 310-11 (Pon. 2003).

In domestic relations matters, the national court should abstain from exercising jurisdiction until the state court has had the opportunity to rule on the issues presented when it is a proceeding for enforcement of a foreign support order. These cases are properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and are properly prosecuted by a state attorney general, rather than by the FSM Attorney General. Anson v. Rutmag, 11 FSM R. 570, 571-72 (Pon. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain

access to them. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM R. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

The general rule is that the recusal or disqualification of an assistant attorney general does not require the recusal of the attorney general or his other assistants. Individual rather than vicarious disqualification is the general rule for prosecutors but individual disqualification must be complete. FSM v. Kansou, 14 FSM R. 171, 175 (Chk. 2006).

The Pohnpei Port Authority has demonstrated irreparable injury by showing that the Governor's February 22, 2008 executive directive would require it to act inconsistently with the applicable state statutes because it purports to assert authority – that of obtaining legal counsel for PPA – that only PPA, acting by its general manager, may assert and it also potentially impairs the general counsel's contract with PPA by unilaterally terminating it and because, even though PPA may use the services of Pohnpei government attorneys to serve as PPA attorneys, this decision clearly lies with the PPA pursuant to its enabling statute and a decision to use the Pohnpei Attorney General's Office may not be imposed by an executive directive inconsistent with applicable state law. Pohnpei Port Auth. v. Pohnpei, 15 FSM R. 541, 544 (Pon. 2008).

The FSM Attorney General cannot be required to obtain permission from (or even consult) a foreign government official because her office was once a member of an (advisory) board that no longer exists and which had no power to express an opinion on the subject even when it did exist. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A grant of the power to "sue and be sued" is the usual legal formulation by which a government agency is granted the power to independently hire its own attorneys instead of being represented by the attorney general. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

When the FSM public laws that created a government agency did not confer upon that agency the power to sue and be sued in its own name, that agency cannot be represented in court by any counsel other than the FSM Attorney General. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A government agency's power to sue and be sued in its own name does not mean that the attorney general cannot ever represent that agency or that the attorney general needs express prior authorizations to represent that agency. The attorney general may represent such an agency without any affirmative authorization to do so as long as that agency does not object to the representation. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A demand by opposing parties that they be provided with written authorization from both the two government agencies that permit the FSM Department of Justice to represent each of the agencies is meritless and must be rejected. Arthur v. Pohnpei, 16 FSM R. 581, 591 (Pon. 2009).

No sound basis is apparent for disqualifying the Chuuk Attorney General's Office from representing the State of Chuuk when it has a statutory duty to represent the state and when the state asserts an absolute right to possession (at least temporarily) of certain funds that the national government has held and is disbursing. That the state also holds a particular view about which of the competing rivals is the duly elected mayor of Tolensom does not alter this since the case is not an election contest or an action in the nature of a petition for a writ of quo warranto challenging the right of a person to hold a particular office.

The same principles apply to a suit by the Chuuk Governor in his official capacity since a claim against a government officer in his official capacity is, and should be treated as, a claim against the entity that employs the officer, thus a claim by a government officer in his official capacity is, and should also be treated as, a claim by the entity that employs the officer. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

Even though the Chuuk Attorney General's Office followed the proper procedure and had a consultation with all the plaintiffs and after the consultation, they all consented to the multiple representation, the court can still conclude that it must disqualify the Chuuk Attorney General's Office from representing two of the plaintiffs because, while the interests of all the plaintiffs are certainly aligned on what, in their view, constitutes the lawful Tolensom municipal government, it is by no means clear that their interests could be aligned on the pivotal issue of whether the lapsed CIP funds must pass through the Chuuk state general fund and the Chuuk appropriation process before arriving in the Tolensom municipal coffers and with the existence of a rival Tolensom municipal government, it is even less clear that the Chuuk Attorney General's Office is statutorily authorized to represent as plaintiffs one rival Tolensom mayor and government. Marsolo v. Esa, 17 FSM R. 480, 486 (Chk. 2011).

A party-plaintiff represented in his official capacity by the Chuuk Attorney General would need separate counsel to defend against a counterclaim when he is sued in his individual capacity since the Chuuk statute does not authorize the Chuuk Attorney General's Office to represent officials in their individual capacities or to litigate their personal interests and because the Chuuk Attorney General's brief asserts that his office only represents the party in his official capacity as Tolensom mayor. Marsolo v. Esa, 17 FSM R. 480, 486 n.3 (Chk. 2011).

When the statute authorizes the Chuuk Attorney General's representation of Chuuk subdivisions only when appropriate; when it is unclear whether two plaintiffs even qualify as a Chuuk subdivision or that the representation would be appropriate; and when to rule that they do would be to implicitly decide (in the plaintiffs' favor) one of the two major issues of the case before the adversary process has gotten underway, the fairness of the proceeding could reasonably be questioned if the Chuuk Attorney General's Office continued to represent a rival plaintiff Tolensom mayor and municipal government. Since the Chuuk Attorney General's Office will remain counsel for the state plaintiffs, it will not be precluded from raising any issues, introducing any evidence, or advancing any arguments that it would otherwise have been able to do. The matter's timely disposition would also not be delayed. Marsolo v. Esa, 17 FSM R. 480, 486-87 (Chk. 2011).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

AVIATION

Fishing and international air transport are areas of foreign investment regulation that are subject to exclusive regulation by the national government. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those

helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

Although Chuuk may "own" the airport, airport runway, tarmac, and terminal buildings, and these are all services an airline uses, the airline already pays the State for the use of the various airport facilities through landing fees for its aircraft, rental fees for office space, and other service fees (and it also pays a 3% gross revenue tax to the national government, half of which is shared with the states), and its passengers departing Chuuk already pay for Chuuk's airport services through a $20 departure fee collected at the airport. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160-61 & n.1 (Chk. 2010).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

"Courier services" is a much more limited concept than all freight and cargo. Courier services are generally those services that provide expedited delivery of small, high-value goods or documents. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

BAIL

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal'Mad, 1 FSM R. 196, 198 (App. 1982).

The object in determining conditions of pretrial release is to assure the defendant's presence at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). FSM v. Jonas (I), 1 FSM R. 231a, 233 (Pon. 1982).

When the highest prior bail was $1,500, imposition of bail in the amount of $10,000, on the basis of

disputed and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. FSM v. Jonas (I), 1 FSM R. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position's deep ties to Ponapean society, may be expected to appear and stand trial if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Legal standards for setting bail are established by the Constitution and Criminal Procedure Rule 46. FSM v. Etpison, 1 FSM R. 370, 372 (Pon. 1983).

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial officer must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. FSM v. Etpison, 1 FSM R. 370, 373 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

Because a prosecutor's assessment of probable cause is not sufficient alone to justify restraint of liberty pending trial, a preliminary hearing would be required if the defendant were to be detained pending trial or if significant restraints were to be placed on his liberty. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The government is required to make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

Because a probable cause determination is not a constitutional prerequisite to the charging decision, it is constitutionally required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

Failure to return a .22 rifle to a criminal defendant does not show bias when the defendant's release conditions do not allow him to possess firearms, since if the government had returned the rifle to him, he would have been put in the position of violating his own bail bond release. That is not a position the government should be permitted to put any defendant into. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

When a person is the subject of more than one criminal prosecution and has different release conditions in each case, that person must obey the most stringent of the release conditions. Likewise, if in one prosecution, the defendant is ordered held without bail, it does not matter whether in another prosecution the defendant has been released on bail or even on his own recognizance, he will be held without bail to answer the case for which he was ordered held. FSM v. Wainit, 12 FSM R. 172, 178 (Chk. 2003).

Having sought the same release conditions for a defendant in two separate prosecutions does not constitute a hopeless intertwining of the two cases. Release conditions in two otherwise unrelated cases are easily separable. FSM v. Wainit, 12 FSM R. 172, 178 & n.3 (Chk. 2003).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

While denial of bail because a defendant, who was charged with driving under the influence, posed a danger to the community since he might operate a vehicle under the influence at some point in the future may possibly be correct under Kosrae Criminal Procedure Rule 46(a)(1), it contravenes Kosrae State Code Section 6.401, which permits a court to deny a defendant bail only if the defendant is intoxicated and will be offensive to the general public. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Rules of procedure generally may not abridge substantive rights created by statute. Thus, to the extent Kosrae Criminal Procedure Rule 46(a)(1) purports to abridge a defendant's right to bail under Kosrae State Code Section 6.401, the Rule is likely void and of no effect. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

The court is obligated to set pretrial release conditions for defendants when they make their initial appearance. At an initial appearance, the court is required to, among other things, inform a defendant of his rights, including his right to retain counsel, or to request the assignment of counsel if the defendant is unable to obtain counsel, and will, if requested, direct the appointment of counsel. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

Pretrial release orders do not await the assignment of counsel. A defendant is entitled to release after his initial appearance, if at all possible, rather than face the bleak prospect of being jailed until counsel has been appointed and appeared. A defendant may seek modification of his or her pretrial release order at any time. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

A release condition that the defendants report money sent abroad is not contrary to the purpose of pretrial release conditions to ensure the defendant's appearance at trial and assure the community's safety when among the possible penalties, if convicted of the offenses charged, is the forfeiture of certain assets allegedly wrongfully acquired; when the provisions help assure that the res that might be subject to forfeiture is not transferred from its current owners or does not depart the jurisdiction – it helps assure the presence of the res; and when it is a less drastic measure than that sought by the government, which was to freeze the movants' assets and not permit any remittances abroad without prior court approval. FSM v.

Kansou, 12 FSM R. 637, 643 (Chk. 2004).

When the rationale behind the reporting requirement is that potentially forfeitable assets not be spirited out of the jurisdiction and one defendant is charged with only one count of conspiracy and forfeiture of assets is not a penalty that may be imposed for conviction of that offense, his pretrial release conditions will be modified to eliminate the provisions concerning reporting funds sent abroad and restricting the sale of property. FSM v. Kansou, 12 FSM R. 637, 644 (Chk. 2004).

Criminal Rule 46(a)(1) through (6) deals with pretrial release. Rule 46(a)(1) requires the court to release a defendant "pending trial on his personal recognizance or upon the execution of an unsecured appearance bond" unless such a release will not reasonably assure the defendant's appearance in court or the victim's or the community's protection from physical violence. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

When the medical evaluations in the file offer no assurance of safety to the defendant or to the person or property of others, the court will consider evidence of his dangerousness to himself and to the person or property of another at a hearing on fitness to proceed, and pending that hearing the defendant will remain in custody as previously ordered. Kosrae v. Charley, 14 FSM R. 470, 473 (Kos. S. Ct. Tr. 2006).

An accused's claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused's motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

The government must make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. The finding of probable cause may be based on

hearsay evidence. Chuuk v. Sipenuk, 15 FSM R. 262, 264-65 (Chk. S. Ct. Tr. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court's determination, and, if, after its independent review of the facts and the trial court's reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge's determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

Under Kosrae statute, one has a right to pretrial release on bail unless he is under the influence of intoxicating drugs and the court determines that he will be offensive to the general public. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

The protection of the victim or the community from danger or physical violence posed by a defendant is a factor the court may consider in setting or denying bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When, after the appellate court's independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court's statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants' motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

BANKRUPTCY

Exhibit A and Form 4 are official forms that are only to be filed by corporate debtors in chapter 3 reorganization cases, not by an individual applying for bankruptcy relief under chapter 2. Amayo v. MJ Co., 14 FSM R. 535, 537 (Pon. 2007).

A bankruptcy application must be accompanied by the debtor's statement of financial condition, as well as schedules of debts, assets and exemptions of the debtor. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon.

2007).

Under the Bankruptcy Rules, the debtor's schedules and statements must, in a voluntary case, be filed with the application or if the application is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

A "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The bankruptcy court may choose to try the plaintiffs' previously-filed claim itself although the claim was previously filed in another case. Amayo v. MJ Co., 14 FSM R. 535, 539 (Pon. 2007).

In a bankruptcy case, a "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor, and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. An unliquidated claim is one whose amount has not been determined or calculated. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

An "interested party" who may appear in a bankruptcy proceeding includes any creditor of the debtor. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. In re Panuelo, 15 FSM R. 23, 27 n.1 (Pon. 2007).

The Bankruptcy Act gives the bankruptcy court three choices in the case of disputed claims: the court may summarily determine the matter upon motion, conduct a trial on the claim, or refer the matter to another court for determination. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A bankruptcy court's summary determination of disputed claims is properly reserved for those cases where there are no debtor's assets left to make any payments to the unsecured creditors so the amount of the debtor's liability matters little since there will never be any money to pay it. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A creditor's disputed claim could be tried as part of a bankruptcy case, but when that would entail a full-blown trial with witnesses and evidence and another trial would still have to be conducted because the debtor is not the only defendant to the lawsuit, that would be a wasteful use of scarce judicial resources and leave the danger of inconsistent judgments. In re Panuelo, 15 FSM R. 23, 29 (Pon. 2007).

The Bankruptcy Act's stated purpose is to fairly balance the interests of creditors and debtors and to give the court substantial latitude to deal with abuses of the bankruptcy system. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. In re Panuelo, 16 FSM R. 339, 345 (Pon. 2009).

Since the FSM Supreme Court has jurisdiction to entertain a bankruptcy proceeding over a debtor's estate if the debtor resides in or has a domicile in the FSM or has a place of business or property in the FSM, the court has jurisdiction over a debtor's estate and may afford him bankruptcy protection when the debtor alleged in his original bankruptcy application that he has property in Pohnpei and it appeared that his application for bankruptcy protection arose from a failed business operation in Pohnpei and when although the debtor may currently be resident in the Philippines, he is a domiciliary of Pohnpei. In re Mix, 18 FSM R. 600, 602 (Pon. 2013).

The bankruptcy court is granted comprehensive jurisdiction to deal with all matters concerning the bankruptcy estate as long as the court has jurisdiction over the applicant debtor. In re Mix, 18 FSM R. 600, 602 (Pon. 2013).

The court may issue such orders as are enforceable in the FSM and although the court cannot enforce its orders in another country, the court does have a certain extraterritorial reach. The bankruptcy court can, in appropriate circumstances, hold in contempt a debtor or dismiss the debtor's bankruptcy application when the debtor has not obeyed a court order to sell property the debtor has in another country and remit the proceeds to the receiver of the debtor's estate. In re Mix, 18 FSM R. 600, 602 & n.2 (Pon. 2013).

Since a debtor's estate consists of all property owned by the debtor on the date of the application, a debtor's estate will include property owned by the debtor anywhere in the world on the date of the bankruptcy application and the court can make orders to the debtor that affect that property. In re Mix, 18 FSM R. 600, 602 n.2 (Pon. 2013).

A claim by the Marshall Islands Social Security Administration against a debtor in the FSM is not a secured debt – a claim in which the creditor has a security interest in collateral. It is an unsecured claim. In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

A party's failure to oppose a motion constitutes that party's consent to the granting of the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

The Bankruptcy Code, Title 31 of the FSM Code, stays the collection of judgments against the debtor who has sought bankruptcy protection and requires that all debt collection from the debtor take place within the bankruptcy proceeding wherein the bankrupt debtor's liability for his debts will either be satisfied or be discharged. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Since one debtor's bankruptcy will not afford a different debtor protection from liability for his own indebtedness or his own liability, a corporation's bankruptcy will thus not release a guarantor from his personal liability for the judgment against him. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

– Automatic Stay

By operation of law, the moment a person files an application for relief under the Bankruptcy Act of 2004 (Title 31 of the FSM Code), all legal proceedings against that applicant-debtor are automatically

stayed with the exception of criminal proceedings and proceedings by a governmental entity to enforce a police or regulatory power. No court order or notice is needed or issued for the stay to take effect. Amayo v. MJ Co., 14 FSM R. 535, 537 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The Bankruptcy Act sets forth the proper procedure to be followed by anyone who desires relief from the automatic stay. Relief from the automatic stay may be sought by applying to the bankruptcy court, and if that court grants the relief from the stay and determines that the disputed claim against the debtor should be referred to and determined by the court in which the case was already filed, that court will proceed with trial of the claim against the debtor. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

Unless and until the bankruptcy court grants relief from the automatic stay and refers the matter to the court in which the claim was filed to determine the amount of the claim allowable, the court can take no further action on the claim against the debtor. A plaintiffs' request to the court in that case cannot be considered a request for relief from the automatic stay since it bypasses the bankruptcy court, the only proper forum in which to seek such relief. Only the bankruptcy court can lift the automatic stay. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

The trial court has no power to enter a default on the issue of the debtor's liability or to try damages (damages would still need to be proven in an evidentiary proceeding) while the Bankruptcy Act's automatic stay is in effect. Amayo v. MJ Co., 14 FSM R. 535, 538 (Pon. 2007).

When an automatic stay has taken effect because one defendant applied for bankruptcy relief, trial could sill proceed as scheduled on the plaintiffs' claims against the other two defendants, but when the court considers that to be a needless waste of scarce judicial resources and an unnecessary financial burden on the plaintiffs to have to try the case first against those defendants, and then against the debtor, the court may continue the trial. Amayo v. MJ Co., 14 FSM R. 535, 539 (Pon. 2007).

An affected party may seek relief from the automatic stay by applying to the bankruptcy court and that court, for cause shown, shall either grant relief from stay or grant such other relief as will provide adequate protection for the party requesting relief from stay. In re Panuelo, 15 FSM R. 23, 26 (Pon. 2007).

The bankruptcy court will grant relief from the automatic stay and permit "another court" to try creditors' disputed claims against the debtor and determine the amount of the debtor's liability (if any) to the creditors when it is in the interests of judicial economy and the expeditious and economical resolution of litigation and the parties were ready for trial before the bankruptcy application; when the impact of the stay on, and the harm to, the creditors is great, while the only harm to the debtor is that his attorney will have to try the case, something he was already prepared to do; when relief would result in complete resolution of the issues between the creditors and the debtor (except, of course, payment of any judgment); and when the litigation involves third parties and would not appear to prejudice the debtor's other creditors since any judgment against the debtor in that case must be pursued only in this bankruptcy case since the stay will not be lifted so as to permit the enforcement of any judgment obtained against the debtor in any forum other than this bankruptcy case. In re Panuelo, 15 FSM R. 23, 29 (Pon. 2007).

– Debtor's Estate

The debtor's estate that is subject to a bankruptcy receivership consists of, subject to the exemptions contained in section 209 of the Bankruptcy Act, all property owned by the debtor on the date of the application. In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Whether property is exempt from bankruptcy creditors is an issue that should be brought up after the

appointment of a Receiver. A claim that the property is exempt is not an excuse for failing to list it in the official forms since a debtor must list property claimed as exempt under on the schedule of assets required to be filed by Bankruptcy Rule 1007. This allows creditors to object to the debtor's claim of exemption. In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Since the Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, it would be inherently unfair to the creditors' interests if only a debtor's property that happened to be in the FSM when the bankruptcy application was filed were included in the debtor's estate (and the debtor's property elsewhere not included). In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

A debtor's receivership estate consists of all property owned by the debtor on the date of the application, all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after the bankruptcy application, and all property acquired by the receivership estate after the date of application. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

Income earned by a debtor after his bankruptcy application is not part of the receivership estate, but property that was owned by the debtor when he applied for bankruptcy protection is part of the receivership as must be the return (or unearned income) generated by that property. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

Proceeds of property of the receivership estate generated (or acquired) by receivership estate property after the debtor's application, goes to and is part of the receivership estate. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A transfer of property out of the debtor's estate, especially to insiders, without the return to the estate of reasonably equivalent or fair market value, is a fraudulent transfer or a transfer with intent to defraud. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

Bankruptcy Code Section 209(2)(b), which exempts from the debtor's receivership estate all tools, implements, utensils, two work animals and equipment necessary to enable the debtor to carry on his usual occupation, does not apply to individual filings where the debt is primarily of a business nature. A debtor cannot exempt such business tools from his receivership estate, especially when he is no longer in business. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

Fishing coolers, fishing gear, lures, rod and reel, fishing lines, fishing net spear gun, .410 shotgun, TV-flat screen, laptop, PC, 23 ft boat, trailer, 75hp motor, life jackets for the boat and boating accessories are not items that qualify as exempt personal and household goods under 31 F.S.M.C. 209(2)(a). In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

A boat and its motor are exempt to the combined value not in excess of $2,500 and a motor vehicle is exempt not to exceed $1,500 in value, and if the vehicle exceeds the $1,500 exempt valuation and the boat and motor exceed their $2,500 exempt valuation, then they can be sold with the excess going to the creditors and the debtor keeping the exempt value. In re Mix, 19 FSM R. 63, 64-65 (Pon. 2013).

Since a son falls within the definition of an insider, a debtor's transfers of property to his son at any time after one year before the debtor's bankruptcy filing are voidable as preferences or as fraudulent transfers. The Receiver shall recover these items or their cash value from the son if they are in his possession. In re Mix, 19 FSM R. 63, 65 (Pon. 2013).

– Discharge

A debtor is not entitled to a discharge from creditors' claims if the debtor has transferred property with intent to defraud after date of application and the debtor may also be denied a discharge for a fraudulent transfer of a debtor's interest in property incurred within one year before the application for receivership. In re Panuelo, 16 FSM R. 339, 344 & n.1 (Pon. 2009).

The Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, and to do this a receiver is required to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the estate's best interest, and at the end of the proceeding, give the debtor who has not abused the bankruptcy system an opportunity to get a fresh start. But a debtor who has abused the bankruptcy system is not entitled to a discharge of his debts and a fresh start. In re Panuelo, 16 FSM R. 339, 344-45 (Pon. 2009).

The court can discharge in the FSM the debt owed to the Marshall Islands because a discharge operates as an injunction against the continuation of any act or action to collect a debt as a personal liability of the debtor, but since the discharge or injunction would be enforceable only in the FSM, the Marshall Islands Social Security Administration might still seek to collect its claim in the Republic of the Marshall Islands or in some other foreign country, constrained only by the application of comity by those countries' courts. In re Mix, 18 FSM R. 600, 602-03 (Pon. 2013).

– Dismissal

The court may dismiss a bankruptcy application if it is in "the best interests of the debtor and the creditors" or if the debtor's application was in bad faith. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

It may be that the Bankruptcy Code's only remedy for unauthorized transfers of property in the debtor's estate after the start of a bankruptcy case is to dismiss the case without a discharge of the debtor's debts. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A debtor in bankruptcy is required to cooperate with the receiver, and his failure to cooperate with the receiver may subject his bankruptcy application to a dismissal for substantial abuse without any of his debts being discharged. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

A debtor's transfers of his property to others after the commencement of a bankruptcy can result in the dismissal of his application for bankruptcy protection without the discharge of his debts. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

The court may issue such orders as are enforceable in the FSM and although the court cannot enforce its orders in another country, the court does have a certain extraterritorial reach. The bankruptcy court can, in appropriate circumstances, hold in contempt a debtor or dismiss the debtor's bankruptcy application when the debtor has not obeyed a court order to sell property the debtor has in another country and remit the proceeds to the receiver of the debtor's estate. In re Mix, 18 FSM R. 600, 602 & n.2 (Pon. 2013).

– Priorities

For the purpose of administering a bankruptcy estate in the FSM, a foreign government's unsecured claim, even though reduced to judgment, will be relegated to the class of allowed unsecured claims in 31 F.S.M.C. 108(1)(e). In re Mix, 18 FSM R. 600, 603 (Pon. 2013).

– Receiver/Trustee

A receiver's proposed compensation of $125 an hour with a cap on the amount paid based on a percentage of the amount disbursed to creditors, even though the proposal places an upper limit on the compensation, this proposed compensation is still based solely on time-referenced billing, which the court is statutorily barred from approving. In re Panuelo, 15 FSM R. 640, 641 (Pon. 2008).

When a $125 per hour compensation rate is barred because the statute prohibits compensation based solely on time-referenced billing; when $125 an hour seems to be proposed merely because it is the prevailing rate for private attorneys on Pohnpei and the receiver is a lawyer; and when much of the work needed in administering a debtor's estate in bankruptcy may not be lawyer work and non-lawyer work is not compensated at lawyer rates even when done by a lawyer, the receiver will be asked to submit a new compensation proposal. In re Panuelo, 15 FSM R. 640, 641-42 (Pon. 2008).

Bankruptcy Rule 2008 refers only to blanket bonds in Rule 2010 which may be authorized when a trustee or receiver is qualified in a number of cases. A bond will not be required when the receiver has been qualified in only one case, and when the bond requirement is discretionary, especially in this early stage of development of bankruptcy law and the small number of persons who might be able to qualify as a bankruptcy receiver or trustee and the lack of insurance companies that could issue a bond. In re Panuelo, 15 FSM R. 640, 642 (Pon. 2008).

A receiver can move to compel the attendance of persons at a creditors' meeting because interested parties can make such motions, and the receiver stands in the debtor's shoes and the debtor is included in the definition of an "interested party." In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

The receiver is statutorily empowered to avoid preferences paid to creditors made on or within 90 days, or within one year if the creditor was an insider, before the bankruptcy application, and to avoid fraudulent transfers made within one year before the application for receivership, and to recover the transferred property for the estate's benefit. In re Panuelo, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. In re Panuelo, 16 FSM R. 339, 344 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. In re Panuelo, 16 FSM R. 339, 345 (Pon. 2009).

BANKS AND BANKING

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 221 (Pon. 1986).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce,

and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by 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. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term "bank" be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

A financial institution, such as a credit union, that holds money from depositors does have an on-going fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197 (Kos. S. Ct. Tr. 1995).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The FSM Development Bank is authorized to engage in all banking functions that will assist the economic advancement of the Federated States of Micronesia. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 71 (Pon. 2001).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank's use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

An irrevocable standby letter of credit provides the same security as a commercial letter of credit, as it provides a guarantee of payment in the event that a party does not perform according to a contract's terms. A time certificate of deposit for the amount of performance of a contract, with possession of the certificate surrendered to the state, would also provide the state with full security and evidence of funds available. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239-40 (Pon. 2003).

The stated purpose of the FSM Development Bank under 30 F.S.M.C. 104(1) is to assist in the Federated States of Micronesia's economic advancement. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

Under 30 F.S.M.C. 104(2), the Development Bank does not have a duty to provide technical support for

the project for which the money was loaned because 30 F.S.M.C. 104 does not confer a private cause of action, and the Bank does not have a duty under this statute to provide technical assistance to debtors to whom it has already made a loan. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

Congress has the express power to regulate banking, but it has not legislated in the area of bank customer confidentiality. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

The Investment Development Fund was created with money appropriated by the United States. The Federated Development Authority administers the IDF. The FSM Development Bank, pursuant to the FDA's direction, is responsible for administering all IDF loans and IDF money is restricted to financing development projects. Although each state has an earmarked subaccount within the IDF (there is also a private-sector reserve subaccount) and any state may propose a project to be financed from its earmarked subaccount, loans from these subaccounts must be approved by the FDA, and by the Development Bank. Thus, IDF funds are not a state's property, to do with as it chooses. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei's approval was also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

Whenever a bank lends money, it always assumes a risk that the borrower will not repay it. The bank tries to manage or lessen its risk by requiring certain information about the borrower and the money's intended use and by evaluating that information before any money is lent. Even if satisfied that the borrower is creditworthy, a bank may also lessen its risk by attaching certain conditions to the loan and by acquiring a security interest in the borrower's collateral. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

When the statute of limitations has expired on all loan instalment payments that became due before July 20, 2001 and when only two instalment payments were due after that date, the lender is, as a matter of law, entitled to judgment for only those two payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

It is a corporation's usual practice to deposit checks payable to it in a bank account Given this consideration, when a person is asked to cash a check bearing a corporate endorsement he is put on his guard and should verify that the endorsement is authentic, and should take the necessary steps to make certain that the person attempting to cash the check is authorized to do so by the payee corporation. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

Funds in the Investment Development Fund are owned and administered exclusively by the FSM government and are thus not "U.S. funds" but are FSM funds. Arthur v. Pohnpei, 16 FSM R. 581, 589-90 (Pon. 2009).

The Investment Development Fund was created by an enactment of the FSM Congress, and thus was an instrumentality of the FSM national government. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

Since the Federated Development Authority was an instrumentality of the national government created by an FSM Congress enactment, the presence of (uncompensated) persons, who are not national government employees on the FDA Policy Board does not make the FDA something other than a national government instrumentality. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

The Investment Development Fund consists wholly of funds granted by the United States to Federated States of Micronesia for certain development projects lending, and the FSM Development Bank is charged with the administration and documentation of IDF loans. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

The FSM Development Bank and the State of Pohnpei are not one and the same. The bank is a creature of national statute, with its duties and functions delineated. In contrast, the State of Pohnpei is a constitutionally organized state of the FSM. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

Even as restructured, the FSM Development Bank is still imbued solely with a public purpose because it exists and is operated solely for the public's benefit and is authorized to engage in all banking functions that will assist in the FSM's economic advancement. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 616 (Pon. 2013).

While the restructured FSM Development Bank differs from its earlier incarnation, it does not differ enough for it to be considered no longer an FSM national government instrumentality for Section 6(a) purposes because it is still imbued with a public purpose; it is still governed by a special act at title 30 of the FSM Code, rather than by the general banking statutes at title 29; there is still no private ownership of the Bank; 98.7%, of its shares are owned by the national government, making the FSM national government the shareholder that chooses the board of directors, with the exception of the Bank's president who is an ex officio member of the board and who is chosen by the other board members; the Bank is thus still under the control of the FSM national government that created it and still submits annual reports to the national government although now this is in the national government's capacity as a shareholder; and because in every fiscal year but one, Congress has appropriated funds for the restructured Bank's use. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank is fiscally independent of the national government as are a number of other national government instrumentalities and agencies – FSM Social Security Administration; National Fisheries Corporation; FSM Telecommunications Corporation; MiCare Health Insurance; and FSM Petroleum Corporation. This fiscal autonomy removes these FSM national government instrumentalities from the national government's every day political influence and control, but these instrumentalities were created by the national government and are still under its control, first as a shareholder or the shareholder, and second since Congress can, at any time, amend the statutes that created the restructured Bank, or any of these other instrumentalities, to exert or enforce some new national policy preference. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The FSM Development Bank exists solely for the public's benefit. It does not operate for a private purpose and it is not a profit-seeking venture. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

As befits a national government agency or instrumentality, the FSM Development Bank is exempt from any taxes (except import taxes) or assessments on its property or operations, and similar statutory provisions exist for other national government instrumentalities and agencies. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank remains, regardless of the name given it and the other details of form, subject to the article XI, § 6(a) constitutional provision and, as with similar national government instrumentalities, it should be treated as part of the national government for jurisdiction purposes because it is an organization created by the national government for a public purpose and over which the national government can exercise control when it chooses. It is not an organization that the national government merely licensed or authorized to operate for private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa,

18 FSM R. 608, 618 (Pon. 2013).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the note's terms, payment at any branch office will do. When it is undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

A bank does not have to contact each borrower personally and negotiate separately with each borrower to get each borrower to agree to amend the note to require or to allow payment somewhere other than at the closed Pohnpei retail branch office. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A borrower's duty is to repay his loan and to seek a bank office in order to make those payments. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The FSM Development Bank is an instrumentality of the national government, and should be treated as if the national government itself is the actor. It, therefore, has an independent basis for jurisdiction under

the Constitution article XI, § 6(a) and the national forum is available to it. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

The FSM Development Bank may fully adjudicate many matters in the national court until land is at issue. At that time, unless, a separate and additional source of jurisdiction can be found, the case must be dismissed and returned to the state court, or alternately, held in abeyance until the land issue is certified. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on which relief may be granted. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Since the FSM Development Bank was formed by the national government to undertake a public purpose and is subject to its creator's control, the reconfigured FSM Development Bank constitutes a national government instrumentality within Article XI, § 6(a), and is accorded the status equivalent to that of the national government. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 515 (App. 2016).

BUSINESS ORGANIZATIONS

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

Business entities take three general forms – a sole proprietorship, a partnership of some form, or a corporation. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Business expenses (such as rent, utilities, or support-staff salaries) that cannot be allocated to a particular product or service; fixed or ordinary operating costs are considered overhead. Smith v. Nimea, 19 FSM R. 163, 171 n.4 (App. 2013).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

– Cooperatives

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

Cases involving a dissolved cooperative association may be consolidated and assigned a new docket number. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

– Corporations

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Noncitizen corporations are those which are not wholly owned by Federated States of Micronesia citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (Pon. 1987).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 381 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The de facto doctrine, which is employed by courts to treat a business as a corporation even though it has not met all legal requirements for incorporation, is of no relevance to the regulatory prohibition against the corporation engaging in business until the corporation meets minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v. FSM, 5 FSM R. 375, 377 (App. 1992).

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 Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 187 (Pon. 1993).

Corporate regulation is governed by national law unless or until the states undertake to establish corporate codes of their own. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 105 (Pon. 1995).

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

A corporation's president's statement that he bought the barge made eight years after the event and which accurately describes his activity on the corporation's behalf is insufficient to create an issue of material fact precluding summary judgment in his favor when it is consistent with his acting on the corporation's behalf and when the evidence shows that neither he nor the corporation ever took interest in the barge because the purchase was canceled. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7,

the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM R. 391, 397-98 (Pon. 2001).

Under generally prevailing law, a corporation's shareholders or members may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over the corporation's management. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole

proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in the property entrusted to it for a common purpose. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

If a business enterprise is a corporation, it is a different person than the owner himself. A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in it. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

The Pohnpei Business Corporation Act of 1994 provides an avenue of relief for a dissenting minority shareholder in certain situations whereby the dissenting shareholders can demand that the corporation pay them the fair value of their shares, and that they shall then cease to have any interest in the corporation. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has the capacity to sue and be sued in its own name. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A contention that a corporation does not have the proper foreign investment permit to allow it to do the type of business that the movants suppose it would conduct, may be a defense that the movants can raise in an answer, but it is not a ground for dismissal at the pre-answer stage on the contention that the corporation lacked legal capacity. Only if it lacked the power to sue and be sued could its complaint be dismissed at this stage for the lack of legal capacity. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

A corporation is a juridical person separate from its owner. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

A d/b/a is not a party because a d/b/a is just another name under which a person operates a business or by which the person or business is known. A corporation, however, is a juridical person separate from its owner and would therefore be a separate party. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 n.1 (Pon. 2011).

A corporation, a juridical person, must act through a natural person. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 331 (Pon. 2011).

A corporation is not a d/b/a, even if it is wholly owned by one person. It is an artificial, juridical person separate from its owner and is therefore a different person and thus a separate party. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is not a human being but a creature created by the government and subject to its regulation and control, including the rule that in court proceedings a corporation must be represented by a licensed attorney. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

Just as natural persons, appearing pro se, are not permitted to act as "attorneys" and represent other

natural persons, by the same token, non-attorney agents are not allowed to represent corporations in litigation, for a wholly unintended exception to the rules against unauthorized practice of law would otherwise result. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation obviously cannot appear pro se and represent itself since it is not a natural person and it cannot physically appear in court or draft pleadings or the like. Someone must appear for the corporation. Corporations of necessity must always act through their agents. In a court case, that someone would ordinarily be an attorney admitted to appear before the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

The widely-recognized general rule is that a corporation can only appear through an attorney and that a corporation may not represent itself through nonlawyer employees, officers, or shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

When a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court. Corporations are required to appear through attorneys because a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must therefore be a designated spokesman accountable to the court. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Unlike lay agents of corporations, attorneys are subject to professional rules of conduct and are amenable to disciplinary action by the courts for violations of ethical standards. Therefore, attorneys, being fully accountable to the courts, are properly designated to act as the representatives of corporations. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

A corporation cannot appear in the FSM Supreme Court and represent itself either "pro se" or by its nonlawyer officers or employees. It can only appear through an attorney licensed to practice law. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 411 (Pon. 2011).

Often when a shareholder files a derivative action against a corporation, the corporation's regular attorney may defend it as he would an other suit. But when a corporation does not have a regular corporate counsel and neither the plaintiff nor a defendant corporation control the majority of the corporation's shares (each owning 50%) and because they are adverse to each other, neither the plaintiff nor the defendant should choose and hire an attorney to represent that corporation since its corporate interests would likely differ from those of both of its two shareholders. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

An attorney that represents a corporation represents the organization itself, and does not represent the organization's constituents such as its shareholders or its officers. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

It is extremely rare that the court will assign counsel in a civil case. It may be worth a try when the plaintiff and an adverse defendant each own 50% of a corporation that needs representation. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 412 (Pon. 2011).

A corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

Since a corporation can only be represented by counsel, any possibility that a corporation could proceed pro se is precluded. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 572 (Kos. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had

accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Even if it is wholly owned by one person, a corporation is not and cannot be a d/b/a because a corporation is an artificial, juridical person separate from its owner(s) and is thus a separate party. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

A parent corporation named as a defendant on the theory that it was liable for the conduct of the board members and executive director of its subsidiary corporation, will be dismissed when there is no evidence that it is the alter ego of the parent corporation and when there is no evidence (or even allegation) that it is a shell corporation with no assets and that therefore there is a need to pierce the corporate veil in order to obtain any relief. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

A corporation is an artificial person created by law, as the representative of persons who contribute to or become holders of shares in it. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as when a corporation and its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

– Corporations – Dissolution

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM R. 391, 397 (Pon. 2001).

Under the Pohnpei Business Corporation Act of 1994, courts in a shareholder's action when it is established that the acts of the directors or those in control are illegal, oppressive, or fraudulent; or when the corporate assets are being misapplied or wasted, have the power to issue an injunction, appoint a receiver, or receiver pendente lite, to preserve the corporate assets and carry on the corporation's business until a full hearing can be had. The appointed receiver may then, under the court's supervision, liquidate the corporation's assets and dissolve the corporation. McVey v. Etscheit, 13 FSM R. 473, 475 (Pon. 2005).

Since the Pohnpei Legislature probably never intended that the Pohnpei Business Corporation Act's involuntary liquidation and dissolution provisions were to be used by a competitor to eliminate its competition, the court must tread warily in such a case. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

A corporation has a perpetual existence until dissolved by the appropriate authority. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A corporation is a juridical, or artificial person with a perpetual existence until properly dissolved and as such is sued *in personam*. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Under Pohnpei state law, the court has the full power to order a corporation's assets and business liquidated if certain statutory conditions have been established in a lawsuit by a shareholder. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Under Pohnpei state law, it is sufficient ground for the court to order a corporation's liquidation if the shareholders are deadlocked in voting power and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

The protracted inability of the shareholders to obtain a quorum for a shareholders' meeting is, of itself, a hopeless deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

It is sufficient ground for the court to order a corporation's liquidation when the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and when irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When each of the two shareholders had two members of the board that supported their shareholder's position on financing expansion and when neither side could agree on the selection of a fifth director or appears to have tried, this was a true deadlock. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

The court can order a corporation's liquidation when the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

For a 50% shareholder to run a corporation as if it were his sole proprietorship is oppressive to the other 50% shareholder, and for the corporation to refuse to cooperate with an accounting firm to facilitate its audit review of the corporation is also oppressive behavior. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

A corporation's liquidation may be ordered when the corporate assets are being misapplied or wasted.

A corporation's unauthorized $30,000 non-interest bearing loan to a company, which was and is controlled by a director, was a misapplication or a waste of the corporation's corporate assets, and the corporation's refusal to cooperate with an accounting firm to facilitate its audit review of the corporation leaves the impression that other corporate assets may have been wasted or misapplied. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Under Pohnpei law, a liquidating receiver can be appointed only after a hearing on notice. At the hearing, the court will consider what powers and duties the liquidating receiver should have so that the appointment order can, as required by statute, clearly state what those powers are and the receiver's compensation. A liquidating receiver may be required to post a bond. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 & n.2 (Pon. 2014).

An audit will be part of any liquidating receiver's duties. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Under Pohnpei law, the court appointing a liquidating receiver for a corporation shall have exclusive jurisdiction of the corporation and its property, wherever situated. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

Once the liquidating receiver is appointed, liquidation (sale) of the corporation will proceed thereafter unless the circumstances drastically change and it is established that cause for liquidation no longer exists. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 244 (Pon. 2014).

– Corporations – Liability

Although many family-incorporated enterprises commingle family and business affairs, the Pohnpei Supreme Court will not make a family's personal assets available to satisfy a judicially mandated monetary award because there is still limited knowledge of business laws in Pohnpei. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

The C.P.A. regulations mandate that corporate directors and incorporators will be held liable for the corporation's debts if the corporation engages in business without meeting the minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Any incorporator or director is liable for violations of the regulations governing incorporation unless he can prove an affirmative defense. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526 (Pon. 1996).

The de facto corporation defense is insufficient as a matter of law when a company has received its corporate charter. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 527 (Pon. 1996).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly attempt to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on

a theory of ratification. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation, with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM R. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its liabilities. Asher v. Kosrae, 8 FSM R. 443, 453 (Kos. S. Ct. Tr. 1998).

Under ordinary circumstances, a parent corporation will not be held liable for the obligations of its subsidiary. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

The mere fact of a loan to a subsidiary is not sufficient to confer liability for the loan on the parent. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM R. 484, 506 (Pon. 1998).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM R. 611, 614 (Pon. 2002).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a corporate resolution agreed to guarantee another corporation's loan and that guaranty included any and all of the borrower's indebtedness to the lender and was used in the most comprehensive sense and means and included any and all of the borrower's liabilities then existing or thereafter incurred or created, the guaranty was sufficiently broad to include any restructuring of the loan even if the restructuring

was considered a debt thereafter incurred or created, and thus, no later corporate resolution was needed for the guaranty to cover the restructuring. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 287 (Chk. 2009).

The *alter ego* doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300-01 (Yap 2012).

When one reasonable inference is that Yuh Yow Fishery is the alter ego of the corporation that owns the vessel thus establishing a genuine issue of fact, the court cannot grant Yuh Yow Fishery's summary judgment motion that it is not liable for damages that may flow from a vessel's grounding since summary judgment is not available when the facts lead to differing reasonable inferences. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 301 (Yap 2012).

The alter ego doctrine treats two entities that are nominally separate as the same when one corporation has acted unjustly or fraudulently and specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

When no clear answer to the alter ego question can be determined from the record before the appellate court, it will remand the matter to the trial court for it to determine whether the trial court judgment is against the individual defendant and the corporate defendant, jointly and severally, or just against the corporate defendant and why. Then, if the trial court decides that the judgment was or should now be entered only against the corporation, the plaintiff must be given the opportunity to try to pierce the corporate veil, especially if the corporation is an empty shell, and proceed against the individual personally as the corporation's alter ego. Smith v. Nimea, 19 FSM R. 163, 174 (App. 2013).

– Corporations – Stock and Stockholders

Par value and stated value of stock are arbitrarily chosen figures which often bear no relationship to the price paid. These figures may be considerably less than the actual value of the stock and have little significance to creditors or others seeking to determine the financial strength of a corporation in the FSM. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 51 (Pon. 1985).

In the Federated States of Micronesia, distribution of dividends in cash or in property may be made only from earned surplus. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The $1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than $1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. FSM v. Ponape Builders Constr. Inc., 2 FSM R. 48, 52 (Pon. 1985).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

The real party in interest in a civil action is the party who possesses the substantive right to be enforced. The mere fact that a shareholder may substantially benefit from a monetary recovery by a corporation does not make the shareholder a real party in interest entitled to seek monetary recovery in a civil action. A claim of such a shareholder will be dismissed. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96-97 (Pon. 1995).

A case that is not a suit by the corporations' shareholders or members to compel the corporations' directors to perform their legal obligations in the supervision of the organization is not a derivative action. Nix v. Etscheit, 10 FSM R. 391, 398 (Pon. 2001).

A shareholder's derivative action is one to enforce a corporation's right when the corporation has failed to enforce a right which it may properly assert. Mori v. Hasiguchi, 17 FSM R. 630, 638 (Chk. 2011).

A stockholder, instituting a stockholder's derivative suit, must plead and prove that a request to institute action was made on the corporation and refused, or that there was matter or matters which excused the making of the request, but when a stockholder sues in his own individual right, no demand upon the corporation itself is necessary. Mori v. Hasiguchi, 17 FSM R. 630, 639 (Chk. 2011).

The purpose of requiring that the complaining shareholder demand action from the board of directors before bringing suit under Rule 23.1 is related to the concept that a shareholder derivative suit is a device to be used only when it is clear that the corporation will not act to redress the alleged injury to itself. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

The Rule 23.1 requirement that stockholders first address their grievance to corporate authority serves numerous practical purposes, such as forcing shareholders to exhaust their intracorporate remedies; permitting the corporation to pursue alternative remedies; permitting the termination of meritless actions designed to vex or harass the corporation; permitting the corporation, with superior knowledge and financial resources, to assume control of the suit; and avoiding unnecessary judicial involvement in the organization's internal affairs. Mori v. Hasiguchi, 17 FSM R. 630, 640 (Chk. 2011).

It is sufficient ground for the court to order the corporation's liquidation when the two shareholders, each having 50% of the votes, are deadlocked in voting power and when the shareholders have been

unable to elect successor directors at a shareholders' meeting for more than two consecutive annual meeting dates since no shareholder meetings have been held for almost ten years because one shareholder has absented itself from any shareholders' meeting, thus depriving the meeting of a quorum. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

Pohnpei state law requires that corporations conduct annual shareholders' meetings and provides that a majority of the shares entitled to vote, represented in person or by proxy constitute a quorum at a shareholders' meeting. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 241 (Pon. 2014).

When no further board action is possible because no quorum for a board of directors meeting is possible since there are now only two directors; when, under Pohnpei state law, a majority (that is, three) is the quorum needed for a board meeting to conduct business; and when none of the board vacancies can be filled since one shareholder has, by its absence, prevented any shareholders' meetings from being held, the board of directors is unable to conduct business since it cannot obtain a quorum. The shareholder deadlock creates a directors' deadlock – inability to conduct business. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Pohnpei statutory law prohibits corporations from lending money to the corporation's directors or employees without shareholder authorization given only if the board of directors decides that such loan or assistance may benefit the corporation. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 242 (Pon. 2014).

Only a corporation's board of directors has the power to either declare and pay a dividend or pay a capital distribution, and then only if certain circumstances exist. An audit may need to be conducted to determine if those conditions exist. FSM Telecomm. Corp. v. Helgenberger, 19 FSM R. 236, 243 (Pon. 2014).

– Joint Enterprises

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

A project that has a number of acts or objectives for a limited period of time and is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise, is a joint enterprise. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 65 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership

engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

– Partnerships

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when a any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM R. 458, 460 (Chk. S. Ct. App. 2003).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A partnership is an association of two or more persons to carry on as co-owners a business for profit. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

Partners are those persons who contribute either property or money to carry on a joint business for their common benefit, and who own and share its profits in certain proportions. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A limited partnership is a legal fiction usually created by statute. Thus in a business arrangement based upon an oral agreement, the business is a general partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

A partnership created by oral agreement is considered a "partnership at will," with no definite term, which may be terminated at any time by the express will of any one partner. In re Estate of Setik, 12 FSM R. 423, 430 n.16 (Chk. S. Ct. Tr. 2004).

Designating one general partner as the managing partner does not destroy the unity of interest necessary for the creation of a partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

Once it is established that a partnership exists, there is a presumption that the partnership continues until the contrary is shown, or until it is dissolved and its affairs are wound up, or until knowledge of its termination comes to persons dealing with the partnership. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

When the primary force behind the growth of a business over the years was the decedent, and that another's role was as a passive investor, it is reasonable to conclude that the decedent's share of the partnership exceeded his paid in capital share and included a significant interest arising out of his creation of and his services to the partnership. Thus, to the extent that the decedent's interest included substantial services to the partnership, it is not unreasonable to conclude that the other had a partnership interest significantly less than the actual share of his financial contribution. In re Estate of Setik, 12 FSM R. 423, 430 (Chk. S. Ct. Tr. 2004).

An unincorporated business entity owned by two persons is a partnership. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

Under the right against self-incrimination, neither a partnership nor the individual partners are shielded from compelled production of partnership records on self-incrimination grounds. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The defendants' transfer of assets from their partnership into a corporation, implies the corporation's assumption of the preexisting debt accrued by the prior family partnership, just as when a corporation and its predecessor sole proprietorship were, as a practical matter, identical since the business remained essentially unchanged as a result of incorporation, and both the predecessor and successor corporation were jointly and severally liable with respect to the debt incurred by the former. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

– Sole Proprietorships

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM R. 437, 441 (Kos. 1996).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM R. 18, 20 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

If more than one person has an interest, of some form and extent, in a business entity, the entity cannot be considered a "sole" proprietorship. In re Estate of Setik, 12 FSM R. 423, 429 (Chk. S. Ct. Tr. 2004).

A d/b/a is not a party. A d/b/a is just another name under which a person operates a business or by which the person or business is known. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 381 (Chk. 2005).

A pro se party can, of course, represent his own business when that business is merely a d/b/a

because a "d/b/a" is not a separate person or party since a d/b/a is just another name under which a person operates the business or by which the person or business is known. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A person operating as a d/b/a is a sole proprietorship that has no legal existence separate from that of its owner and its acts and liabilities are those of its owner and its owner's acts and liabilities are those of the sole proprietorship. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 (Pon. 2011).

A corporation is a juridical person distinct from its owner while a trade name under which a person conducts business is a person's personal property. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

CHOICE OF LAW

Where the plaintiff is a Pohnpei resident, one of the defendants, a party to the contract at issue, is a corporation having its principal place of business in Pohnpei, and where the contract at issue governs work to be conducted in Pohnpei, and the injury which has brought the clause under consideration occurred in Pohnpei, the indemnification clause should be interpreted, and the issues of tort liability determined, in accordance with the law of Pohnpei. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 137 (Pon. 1985).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there, of course, has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

An FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 9 (Pon. 1989).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

State law is to be applied in domestic relations cases. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

The FSM Supreme Court should apply FSM law to determine a claim brought in an FSM court pursuant to FSM statutory authorization by an FSM citizen asserting that FSM officials failed to fulfill the commitments of the FSM national government, and this is so even when key events at issue happened outside of the FSM. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 64-65 (Chk. 1997).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 251-52 (Pon. 1998).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

The national courts of the FSM have frequently been obliged to decide state law issues without the benefit of prior state court decisions. In such instances, the national courts strive to apply the law in the same way the highest state court would. Subsequently, should the state's highest court decide the issue differently in a different case, then prospectively that case will serve as controlling precedent for the national court on that state law issue. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

The FSM Supreme Court's function and goal in diversity cases where state law provides the rule of decision is to apply the law the same way the highest state court would, and that if there is a decision of the highest state court it is controlling and the FSM Supreme Court will apply it. But if there is no such state court decision the FSM Supreme Court must still exercise its jurisdiction and try to decide the case according to how it thinks the highest state court would. In the future, the highest state court could decide the issue differently and future decisions of the FSM Supreme Court would then apply that decision. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM R. 244, 253-54 (Pon. 2001).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537-38 (Chk. S. Ct. Tr. 2002).

When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

When the FSM Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, the court's goal should be to apply the law the same way the highest state court would. But a state court trial division case that was not decided by the highest state court may be deemed not to be controlling, if it appears that the highest state court would decide the question differently. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

State law controls in the resolution of contract and tort issues. When the FSM Supreme Court, in the exercise of its diversity jurisdiction decides a matter of state law, its goal is to apply the law the same way the highest state court would. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

While the interplay between national and state power does mean that, in land cases, the court must apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

There are no grounds to use a foreign statute of limitations period to bar on a laches ground a cause of action arising on Pohnpei under Pohnpei state law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another, and it is not a rule of law, but one of practice, convenience, and expediency. Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which it may be justly demanded. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Comity analysis involves the balancing of three interests and a threshold question. The threshold question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law. When there is a conflict, a court performs a tripartite analysis that considers the interests of the domestic sovereign, the interests of the foreign sovereign, and the mutual interests of all nations in a smoothly functioning international legal regime. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

There is no true conflict between the U.S. statues exempting U.S. military retirement benefits and U.S. social security benefits and the FSM exempt property statute because the U.S. statutes provide exemptions from judgments rendered and enforced in the U.S., and the FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. Zacchini v. Hainrick, 19 FSM R. 403, 411 n.2 (Pon. 2014).

When national law merely provides the forum, the national courts must strive to apply the law in the same way the highest state court would. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435 (App. 2014).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

CITIZENSHIP

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM R. 1, 6 (Pon. 1985).

Article III, Sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

The Citizenship and Naturalization Act places primary responsibility for administrative implementation upon the President, and contemplates that the Executive Branch, not the Judiciary, normally will determine and certify citizenship. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Where there exists an actual controversy involving a concrete threat to citizenship rights and interests, the FSM Supreme Court could be constitutionally required to determine whether a person is or is not a citizen. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Courts in the United States have ruled on citizenship status where that status determines the propriety of official administrative action and administrative remedies have been exhausted. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

Until 7 F.S.M.C. 204 goes into effect, it may be appropriate to take a liberal view in determining when a court ruling on citizenship status may be required to prevent injustice or to permit an individual to proceed with his own business or personal affairs. In re Sproat, 2 FSM R. 1, 8 (Pon. 1985).

A person's parentage will make him an FSM citizen because a person born of parents one or both of whom are FSM citizens is an FSM citizen and national by birth. Hartmann v. Department of Justice, 20 FSM R. 619, 621 (Chk. 2016).

An FSM passport usually has a five-year duration. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A nineteen-year-old with one FSM citizen parent, despite any claim he may have had to another country's citizenship and passport, would unquestionably be an FSM citizen entitled to an FSM passport, even if he also held a another country's passport since he would not lose his FSM citizenship and become an FSM national instead until he turns twenty-one. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

A naturalization applicant, who is an FSM national, must submit a declaration on "Form I" showing the applicant's intent to become an FSM citizen and attach various documents, including proof of renunciation of foreign citizenship. The Division of Immigration then reviews and investigates all the documents' authenticity and conducts a criminal background check of the applicant. After that, the applicant undergoes the indigenous language examination. All the supporting documents are then forwarded to the President's office, which sends a letter to the applicant inviting the applicant to a naturalization ceremony, where the applicant will take the oath of citizenship ("Form II"). The last step includes the filing with the Department of Justice the Federated States of Micronesia Certification of Naturalization ("Form III"). Once all these steps are successfully completed, the FSM national applicant becomes an FSM citizen.

Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

An FSM national applicant for naturalization must first renounce, and prove that he or she has renounced, his or her other citizenship, but apparently can still be denied FSM citizenship (if the applicant has been convicted of a felony or does not pass the indigenous language test). Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

CIVIL PROCEDURE

Except in the most extraordinary circumstances, a court should not accept one party's unsupported representations that another party to the litigation has no further interest in the case. In re Nahnsen, 1 FSM R. 97, 100 (Pon. 1982).

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM R. 145, 150 (Yap 1989).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Time requirements set by court rules are more subject to relaxation than are those established by statute. Charley v. Cornelius, 5 FSM R. 316, 318 (Kos. S. Ct. Tr. 1992).

When a defendant cites certain defenses, but makes no argument as to how they apply and their application is not self-evident, the court may decline to speculate as to how they apply. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 119 (Pon. 1993).

When a party believes that error has occurred in a trial, its remedy is by way of appeal, not by commencing a second action. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 240 (Pon. 1993).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351-52 (App. 1994).

A court will not limit its review of the validity of a claim for relief to the arguments presented by the parties where the claim raises public policy concerns, and the defendant is a pro se litigant. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Rule has not previously been construed by the FSM Supreme Court it may look to the U.S. federal courts for guidance in interpreting the rule. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444 (App. 1994).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

When a defendant's answer has placed all the plaintiff's allegations into issue and even though the defendant did not appear at trial the plaintiff still has the burden of proving his case by a preponderance of evidence. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM R. 507, 509-10 (Chk. S. Ct. App. 1996).

A showing of excusable neglect is required to grant a request for enlargement of time made after the time allowed had elapsed. Counsel's failure to make a note to remind him of the answer's due date and his attention to other matters, both personal and professional, does not establish excusable neglect. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

A defendant's motion to enlarge time to file an answer may be granted, even though excusable neglect has not been shown, when it would be conducive to a speedy and inexpensive determination of the action, the delay has not been long, and no prejudice to the plaintiff is apparent. Bank of Guam v. Ismael, 8 FSM R. 197, 198 (Pon. 1997).

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

When considering a motion to modify its orders, particularly in a long-pending case, a court, in furthering the interest of finality, looks to what has been done, not to what might have been done. Youngstrom v. Phillip, 8 FSM R. 198, 202 (Kos. S. Ct. Tr. 1997).

Under Civil Rule 70, the court may direct an act to be done at the cost of a disobedient party by some other person appointed by the court. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

Failure to file any response to an opponent's submission and failure to file a motion for enlargement of time before or after a court-ordered deadline constitutes consent to the content of the opponent's submission. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

When an FSM court rule, such as General Court Order 1992-2 governing removal, has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 n.1 (Chk. 1998).

Any decision made before a final judgment adjudicating all parties' claims and rights is subject to revision. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

The FSM Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 477 (Pon. 1998).

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. Abraham v. Kosrae, 9 FSM R. 57, 59 (Kos. S. Ct. Tr. 1999).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure, the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 87 n.2 (App. 1999).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or

previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM R. 148, 149 (Chk. S. Ct. Tr. 1999).

For cause shown, the court may, within its discretion, order the enlargement of a period of time, but when the movant does not specify why it needs additional time, no cause has been shown. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

The Kosrae Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Palik v. Henry, 9 FSM R. 267, 269 (Kos. S. Ct. Tr. 1999).

When the FSM moves for a stay of a civil case to preserve the defendants' rights in a related criminal case and the defendants oppose the motion and claim that they would suffer substantial prejudice from a delayed prosecution of the civil action and when the FSM had the prosecutorial discretion to file both the civil and criminal cases simultaneously, although there is nothing in the statute requiring that, the motion to stay will be denied and, in the absence of good cause, the civil case will go forward. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 353 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373-74 (Kos. 2000).

Rules of court properly promulgated, and not exceeding the limitation of the court's rulemaking power, have the force of law. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 (Kos. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Supreme Court has not previously construed the FSM Rule, it may look to U.S. federal practice for guidance in interpreting the rule. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377 n.1 (Chk. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 413 n.3 (App. 2000).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

A party cannot simply leave the jurisdiction to avoid a lawsuit. A party aware she has litigation pending against her, should, prior to leaving the court's jurisdiction, provide her attorney with a means to contact her. A party cannot expect a court to wait and see if she will return before rendering judgment. Harden v. Primo, 9 FSM R. 571, 574 (Pon. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Supreme Court has not previously construed the FSM Rule, it may look to the U.S. federal practice for guidance in interpreting the rule. Moses v. M.V. Sea Chase, 10 FSM R. 45, 49 n.1 (Chk. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

When the FSM Supreme Court has not already construed an FSM court rule which is similar or nearly identical to a U.S. rule, it may look to U.S. practice for guidance. Medabalmi v. Island Imports Co., 10 FSM R. 217, 219 n.1 (Chk. 2001).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Rule has not previously been construed, the FSM Supreme Court may look to U.S. federal practice for guidance. Moses v. Oyang Corp., 10 FSM R. 273, 275 n.1 (Chk. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM R. 391, 395 (Pon. 2001).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While a Rule 68(b) hearing to give the court the benefit of evidence or hearing testimony concerning the claim's value may be both highly desirable and very useful, it is not an absolute necessity because the court may, on its own motion and in its discretion, order that a hearing be held. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the word "may" is used in Chuuk Civil Rule 68(b) and the rule adds even further qualifiers ("a hearing be held if in the discretion of the court") that reveal the discretionary nature of the hearing, the context is clear – the word "may" in Rule 68(b) denotes discretion. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, or to assert at trial any counterclaims or crossclaims, or third party claims, has waived and lost his right to assert at trial affirmative defenses and to assert any counterclaims or crossclaims, or third party claims. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM R. 36, 40-41 (Chk. S. Ct. Tr. 2002).

When the FSM Supreme Court has not construed an FSM court rule which is similar or identical to a

U.S. rule, it may look to U.S. practice for guidance. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203 n.2 (Chk. 2002).

When an FSM court has not previously construed a Civil Procedure Rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 n.1 (Pon. 2003).

Although the court must first look to sources of law in the FSM rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed FSM civil procedure rules which are identical or similar to U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Beal Bank S.S.B. v. Maras, 11 FSM R. 351, 353 n.1 (Chk. 2003).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM Civil Rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 518 n.2 (Chk. 2003).

Although the FSM Supreme Court must first look to sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM R. 520, 527-28 n.1 (Chk. 2003).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM R. 555, 557 n.1 (Chk. 2003).

No hearing on a name change petition will normally be required, unless objections to the petition are properly filed with the court within the time period required. If objections are filed, the court will schedule a hearing at the earliest possible opportunity, and the Clerk of the Court shall give notice of the hearing by the best means available to apprize the objectors of the hearing's date and time. In the absence of objection, and upon confirmation that the name change petition contains all necessary information, the court will grant the petition without hearing, and will give notice to the petitioner that the petition has been granted. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

Pleadings, discovery, summary judgment motions, and trial are all prejudgment procedures and are thus inapplicable to an entirely a post-judgment matter. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

The FSM Rules of Civil Procedure do not apply to proceedings before administrative agencies. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases from other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 n.2 (Yap 2003).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question

the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

A preference exists for resolution of matters on the merits and that, within the bounds of reason, and except when a specific rule, law, or a party's or his counsel's conduct directs a different result, this preference should be given effect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 497 (Chk. 2004).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when a court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 7 n.2 (Pon. 2004).

While a court may, in the interests of the orderly administration of justice, accommodate, if possible, counsel's reasonable requests and travel plans, such notices are not binding on the courts. Counsel must accept the fact that things may arise that will require their attention at times when they would rather not be bothered. Goya v. Ramp, 13 FSM R. 100, 107 n.8 (App. 2005).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when it has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Lee v. Lee, 13 FSM R. 252, 256 n.1 (Chk. 2005).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.1 (Chk. 2006).

A litigant is permitted to make arguments in the alternative. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

Although the court must first look to FSM sources of law, when an FSM court has not previously construed aspects of an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting those aspects. Amayo v. MJ Co., 14 FSM R. 355, 362 n.2 (Pon. 2006).

Although the court must first look to FSM sources of law, when the court has not previously considered certain aspects of an FSM civil procedure rule that is identical to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 n.1 (Chk. 2006).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Supreme Court has not previously construed the FSM Rule, the court may look to the U.S. federal practice for guidance in interpreting the rule. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 n.1 (App. 2006).

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

The civil procedure rules generally do not apply in the appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Civil Rule 65 and the Civil Procedure Rules in general apply to civil proceedings in the trial division, not to appellate division proceedings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The requirement that the trial court "find the facts specially" serves three major purposes: 1) to aid appellate court review by affording it a clear understanding of the ground or basis of the trial court's decision; 2) to make definite precisely what the case has decided in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; and 3) to evoke care on the trial judge's part in ascertaining the facts. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

When a court has not previously construed an civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. Mathias v. Engichy, 15 FSM R. 90, 96 n.5 (Chk. S. Ct. App. 2007).

The trial court satisfies its responsibility to make specific findings of fact when the findings are sufficiently detailed to inform the appellate court of the basis of the decision and to permit intelligent appellate review, but the trial court need not mention evidence it considers of little or no value. As long as the trial court clearly relates the findings of fact upon which the decision rests and articulates in a readily intelligible manner the conclusions it draws by applying the controlling law to the facts as found, no more is needed. The trial court has the obligation to ensure that the basis for its decision is set out with enough clarity to enable the reviewing court to perform its function. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

It is appropriate for a court to modify or otherwise relieve a party from a prior order where there has been mistake, inadvertence, surprise, or excusable neglect. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

An option for enforcing a judgment as provided by statute is the filing of a new civil action based on the judgment. This option is most appropriate avenue and is likely to lead to an efficient and just resolution when the earlier judgment dismissed claims raised by the plaintiff in connection with a land use agreement he had entered into with the defendant and the defendant, some two decades later, seeks to use this judgment to prevent the others, who are not parties to the action and seemingly not involved in the underlying dispute until recently, from using land that may or may not be subject to the judgment and a dispute clearly exists as to whether the other should be deprived of using the land in dispute even if that land is subject to the judgment because new evidence is needed to resolve this dispute between the defendant and the other. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

When interpreting FSM Civil Rule 63 and applying it to a matter, it is appropriate to consider the treatment of similar rules of procedure as they are found in American jurisdictions. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

When none of the trial court's rulings on legal issues, such as the existence of contracts and no liability for interest or attorney's fees, were appealed, they remain the law of each case on remand. Albert v. George, 15 FSM R. 574, 581 n.2 (App. 2008).

When an FSM court has not previously construed the interplay between Civil Procedure Rules 59 and 60 which are identical or similar their U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 n.1 (App. 2008).

Although the court must first look to FSM sources of law rather than start with a review of other courts' cases, when an FSM court has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Alanso v. Pridgen, 15 FSM R. 597, 600 n.2 (App. 2008).

When an FSM court has not previously construed aspects of an FSM Civil Procedure Rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 n.2 (Pon. 2008).

Whenever process in rem is issued, the execution of such process shall be stayed, or the property released, on the giving of security. "On the giving of security" refers to the situation where the defendant has "given security to respond in damages," and refers to the bond or other security posted to obtain the release of the property in the first instance, not the property itself. The fact that the FSM is holding the seized vessel does not mean that security has been given within the meaning of Admiralty Rule E(6)(d). FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137 n.1 (Pon. 2008).

When courts in the FSM have not specifically construed the application of a procedural rule, the court may look for guidance to American jurisprudence interpreting a similar or identical rule's application. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 218 n.1 (Chk. S. Ct. Tr. 2008).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. Nakamura v. Mori, 16 FSM R. 262, 267 n.3 (Chk. 2009).

Once the court, after trial, has reviewed the testimony and other evidence of record in the matter, it must make findings of fact and conclusions of law pursuant to FSM Civil Rule of Civil Procedure 52(a). Jano v. Fujita, 16 FSM R. 323, 325 (Pon. 2009).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

The procedure for small claims is set out in the Kosrae Rules of Civil Procedure Rule 87 and the GCO's that apply. Any civil action under $3,000 is considered under Rule 87 and the purpose of the procedure is to enable small claims to be justly decided and fully disposed of with less formality, paper work, and expenditure of time than is required by the ordinary procedure for larger claims. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

If an FSM civil procedure rule that is identical or similar to a U.S. counterpart has not previously been construed, an FSM court may look to U.S. sources for guidance in interpreting the rule. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 650 n.2 (Pon. 2009).

Although to establish legal requirements FSM courts must first look to FSM sources of law rather than begin with a review of other courts' cases, when no FSM court has previously construed a Kosrae procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. George v. Albert, 17 FSM R. 25, 31 n.1 (App. 2010).

When an FSM court has not previously construed an FSM civil procedure rule that is similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the FSM rule. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 n.4 (Chk. 2010).

Although the court must first look to FSM sources of law rather than start by reviewing other courts' decisions, when the court has not previously considered whether a deponent and an attorney may be jointly held liable for Rule 37(a)(4) sanctions and that FSM civil procedure rule is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 91 n.3 (Pon. 2010).

There is no requirement that a civil plaintiff appear in person at trial. Sandy v. Mori, 17 FSM R. 92, 95 n.2 (Chk. 2010).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

While the court must first consult FSM sources of law rather than begin with a review of foreign sources, when an FSM civil procedure rule that was drawn from a U.S. counterpart, has not previously been construed, the court may look to U.S. sources for guidance. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 n.1 (Pon. 2010).

Where appropriate, such as when FSM law is silent as to an issue, the court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions so that when an FSM court has not previously construed a Civil Procedure Rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 223 (Kos. 2010).

Although the court must first consult FSM sources of law rather than start with a review of other courts' cases, when the court has not previously construed certain aspects of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may consult U.S. sources for guidance. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 330 n.2 (Pon. 2011).

A document or a filing is what it is regardless of what it has been labeled since form must not be elevated over substance because absent compelling reasons to the contrary, form must ever subserve substance. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 n.5 (App. 2011).

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 (App. 2011).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

While the court must first consult FSM sources of law rather than begin by reviewing foreign ones, when an FSM civil procedure rule that was drawn from a U.S. rule has not previously been construed, the court may look to U.S. sources for guidance. Mori v. Hasiguchi, 17 FSM R. 630, 638 n.1 (Chk. 2011).

The FSM Rules of Civil Procedure are generally drawn from the U.S. Federal court rules. Thus when the FSM Supreme Court can find no directly applicable FSM caselaw on the point, but there are numerous

United States cases addressing it or similar issues, the court may look to interpretations of the applicable U.S. Federal Rules of Civil Procedure for guidance in interpreting the FSM rule. FSM v. Shun Tien 606, 18 FSM R. 79, 81 (Pon. 2011).

FSM Evidence Rule 611(b) allows the court to permit a procedure where the plaintiff would call the witnesses but each party would be able to treat each witness as if the witness were its own, that is, each defendant could ask each witness any relevant question regardless of whether that question was within the scope of the plaintiff's direct examination. In effect, each party put on its case-in-chief simultaneously with the others. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 & n.2 (App. 2011).

Mere form cannot be elevated over actual function. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312-13 n.4 (Yap 2012).

When a final judgment is entered, temporary orders cease to be valid, subsisting orders. In general, a trial court's temporary orders issued during the pendency of a proceeding are superseded by the trial court's final order. Temporary orders are always subject to revision or repeal by the final judgment, even if not explicitly mentioned in that judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373-74 (App. 2012).

Under the Chuuk Eminent Domain statute, the applicable Rules of Civil Procedures for the Chuuk State Supreme Court govern the procedure for the condemnation of private lands under the power of eminent domain, except as otherwise provided in the statute. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

A state law requiring a lawsuit to contain a statement in a form approved by the Pohnpei Attorney General informing the state employee sued of his rights and responsibilities under Title 58, chapter 2 of the Pohnpei Code is a matter of procedure, and even when the rule of decision in a case before the FSM Supreme Court is governed by state law, procedural matters are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Dismissal will therefore not be required in a suit in the FSM Supreme Court when such a statement was not included. Perman v. Ehsa, 18 FSM R. 452, 454 (Pon. 2012).

The FSM Rules of Civil Procedure apply in *in rem* admiralty cases except to the extent they are inconsistent with the FSM Supplemental Rules for Certain Admiralty and Maritime Claims, in which case the supplemental rules govern. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461,

464 n.2 (Yap 2012).

The Kosrae Rules of Appellate Procedure govern procedure in the Kosrae State Court trial division when considering an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.1 (App. 2013).

Although the court must first look to FSM sources of law, when an FSM court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Lee v. FSM, 18 FSM R. 558, 561 n.1 (Pon. 2013).

FSM civil procedure rules discourage litigation by ambush. Lee v. FSM, 18 FSM R. 558, 562 (Pon. 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

Although the court must first look to FSM sources of law, FSM Const. art. XI, § 11, when an FSM court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 659 n.1 (Pon. 2013).

When there has been no trial yet, there can be no mistrial. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

When a court in the FSM has not previously construed a civil procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 305, 311 n.1 (App. 2014).

Under FSM Civil Rule 16, the court has the authority to hold pretrial conferences. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 557 (Pon. 2014).

In deciding whether to stay a civil proceeding parallel to a criminal case, the decision maker should consider 1) the plaintiff's interest in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay, 2) the burden which any particular aspect of the proceedings may impose on defendants; 3) the court's convenience in the management of its cases, and the efficient use of judicial resources; 4) the interests of persons not parties to the civil litigation; and 5) the public's interest in the pending civil and criminal litigation. Notably, the judicial economy factor in not duplicating the efforts in both the civil and criminal case is frequently used to justify a stay. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

When a civil matter and a criminal matter are inextricably interwoven, when the parties are the same; when both cases are based on the same alleged conduct; when both are alleged violations of the same FSM fisheries law; when the only distinction is that the civil action seeks civil penalties while the criminal action seeks criminal penalties; and when the defendants admitted to trying to use civil depositions to acquire discovery information, but that what they really seek is the fishery observer's report and not only is this report not privileged in the criminal matter but also must be disclosed under Criminal Rule 16, there is no reason why this particular discovery material should be stayed or withheld in the civil proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Although the court must first look to FSM sources of law and circumstances rather than begin with a review of other courts' cases, when an FSM court has not previously construed an FSM Civil Procedure Rule 56(b) which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 n.1 (Pon. 2015).

Although the court must look first to FSM sources of law rather than begin reviewing other courts'

cases, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance. Pillias v. Saki Stores, 20 FSM R. 391, 395 n.1 (Chk. 2016).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514-15 (App. 2016).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when an FSM court has not previously analyzed an aspect of an FSM procedural rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in applying the rule. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 n.5 (Chk. 2016).

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

A proposition that it is mandatory that separate sections specifically entitled "Findings of Fact" and "Conclusions of Law" appear within an order, is misguided. Kosrae Civil Procedure Rule 52 plainly states that if an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusion of law appear therein. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

A presiding judge is under no obligation to reduce his findings and conclusions to writing, so long as he has stated the findings and conclusions orally in open court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

– Admissions

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

Although the court may allow for an enlargement or a restriction of the time in which to respond to a request for admissions, a complete failure to respond within that allotted time automatically constitutes an admission, without any need for the requesting party to move for a declaration by the court that the matters are deemed admitted. Leeruw v. Yap, 4 FSM R. 145, 148 (Yap 1989).

Once matters have been admitted through a failure to respond to a request for admissions, a motion by the responding party to file a late response to the request for admissions will be treated as a motion to withdraw and amend the admissions. Leeruw v. Yap, 4 FSM R. 145, 148 (Yap 1989).

One purpose of requests for admissions is to relieve the parties of having to prove facts which are not really in dispute. Leeruw v. Yap, 4 FSM R. 145, 149 (Yap 1989).

If a requesting party relies on admissions to its prejudice, it would be manifestly unjust to allow the responding party to amend its responses at a later time, but the sort of prejudice contemplated by the rule regards the difficulty the requesting party may have in proving the facts previously admitted, because of lack of time or unavailability of witnesses or evidence, not simply that the party who initially obtained the