

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

The Pohnpei statute of frauds covers a contract to charge any person upon any special promise to answer for the debt, default, or misdoing of another. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 n.3 (Pon. 2013).

Under a statute of frauds, writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the parties' names, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. The writing need not state the contract's particulars so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

Generally, an oral agreement is as enforceable as a written one. Reducing an agreement to writing, however, can assist the parties in assuring that all the necessary terms have been agreed to and are definite, or later assist a court in ascertaining what those terms were. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 n.3 (Pon. 2016).

– Novation

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM R. 311, 314-15 (Pon. 1995).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 74 (Pon. 2001).

The term "novation" is used almost exclusively in contract law and denotes the parties' substitution of a new agreement for an old one that involves either a new obligation between the same parties, or a new debtor, or a new creditor. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Since, upon the execution of a valid and legal substituted agreement the original agreement merges into and is extinguished, and since failure to perform the substituted agreement will not revive the old agreement, a 1999 lease agreement that was extinguished by a 2001 land purchase agreement will not be revived by the state's breach of the land purchase agreement. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Parties to a contract may agree to replace an existing contract with a new and different contract before the original contract's term has expired. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, \$50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

– Option Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

The offeror may vary the common law rule by express provision in the contract; thus, he remains in control of his offer. Absent express provisions to the contrary, an option contract is binding on the offeror who must keep the offer open for a specified time period. The offeree is free to accept or reject within that period. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

– Parol Evidence

A party may not seek to introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with good faith belief that what they sign is what they agree to. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 55 (Pon. 1993).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

The parol evidence rule does not bar evidence of subsequent modification of the contract. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

When there is a single and final memorial of the understanding of the parties embodied in a written agreement, for evidentiary purposes all prior and contemporaneous negotiations are treated as having been superseded by that written memorial under the parol evidence rule. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604-05 (Pon. 1996).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM R. 233, 236 (Kos. S. Ct. Tr. 1999).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM R. 479, 480 (Pon. 2001).

The parol evidence rule bars evidence of a contemporaneous or prior oral agreement that contradicts or alters the terms of the written agreement, but parol evidence of a collateral agreement that does not alter or contradict the written agreement is not barred by the parol evidence rule if the collateral agreement is one that in the circumstances might naturally be omitted from the writing. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

Since interest on unpaid amounts is not a collateral agreement that in the circumstances might naturally be omitted from the writing but is a term that would naturally be expected to be part of an agreement about payment for goods provided on an open account or on credit because it alters the written agreement between the parties, therefore evidence of a contract term that 1½% interest per month was due on unpaid amounts is inadmissible under the parol evidence rule. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM R. 423, 425 (Chk. 2006).

– Ratification

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).

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).

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).

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).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Ratification is the approval of an otherwise unauthorized act or transaction. An implied ratification may take place if one, with full knowledge and understanding of the material facts, exhibits conduct that shows a recognition and adoption of the unauthorized act or transactions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

The insurer ratified, or approved, the check cashing activities of its agents to the extent that they distributed the money obtained from the checks to policy holders for legitimate insurance purposes, and that the insurer gave credit to its agents for these distributions shows this conclusively. But the insurer never ratified the agents' conversion of the funds that were not accounted for, or were not used for insurance purposes since the insurer's efforts to figure out what had happened, to stop it from happening, to arrive at an accounting for the missing money, and to restore order to its Pohnpei operation, manifest its disapproval of the practice of cashing premium checks initiated and continued by its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444 (Pon. 2009).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When an insurer, by its acts, ratified only the unauthorized agreements between its agents and its eligible policy-holders – the distribution of cash advances to eligible policy-holders, it "recovered" those funds from its policy-holders and since the insurer is not entitled to a double recovery, it cannot hold others liable for those sums and must give them credit for those sums. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Once the insurer ratified its agents' unauthorized agreements with its eligible policy-holders, it was barred from recovering any of that money from others because that would be a double recovery since the insurer had already "recovered" those funds from its policy-holders. Plaintiffs are not permitted a double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

An insurer did not ratify its agents' check-cashing agreements with a business by giving the business credit for its agents' cash advances to its eligible policy-holders. It merely recognized that it was not entitled to double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

When the insurer did not ratify any of its agents' check-cashing agreements but ratified only each of its agents' unauthorized agreements with its eligible policy-holders, no unauthorized agreement was partially ratified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

– Reformation

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

Reformation will not be granted if its effect would be to curtail the rights of a bona fide purchaser for value or others who have relied upon the writing. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

When a loan agreement and promissory note that were the writings memorialized an agreement are reformed to accurately reflect the parties' agreement, the court is not creating an obligation where none currently exists by reforming the writings. The court is merely reforming the writings to reflect an obligation that already exists. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

The trial court did not err in finding a meeting of minds and no mutual mistake and that the mistake was in reducing the terms to writing when the facts suggest that the lender understood AHPW to liable on the loan and the parties stipulated that AHPW should have signed the promissory note and that the defendants intended to guarantee the loan. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 396 (App. 2006).

Reformation is available where there is an incorrect reduction of a term to a writing. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

The trial court did not err when it reformed the loan documentation to reflect the parties' stipulated intent that AHPW be the obligor on the promissory note and that the appellants be guarantors of that obligation. As such, appellants were not guaranteeing their own obligation, they were guaranteeing AHPW's obligation on the promissory note. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 397 (App. 2006).

– Rescission

The general rule is that parties to a contract may rescind it by making a new contract that is inconsistent with the original contract. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium

and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 9 (Pon. 2004).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurer seeking to rescind a life insurance policy upon a ground which rendered it voidable from the beginning must return or tender the premium paid thereunder because rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and entitle him to return of the premium paid since the general rule is that a contract must be rescinded in whole and cannot be rescinded in part. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

Lawyers are accustomed to seeing the word "restitution" in connection with the "rescission" or cancellation of a contract because when a contract is rescinded, each party is entitled to be restored what he gave the other, or in other words, is entitled to restitution. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Rescission will normally be accompanied by restitution on both sides. It is the general rule that rescission will be granted only on the condition that the party asking it restore to the other party, substantially, the consideration received. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

– Specific Performance

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

The definiteness of the contract terms and the ease or difficulty of enforcement or supervision must be considered before awarding specific performance damages. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

When the parties have agreed in the court's presence to specific performance on the issue of damages, trial is not necessary on that issue. James v. Lelu Town, 10 FSM R. 648, 650 (Kos. S. Ct. Tr. 2002).

Specific performance is itself not a cause of action, but is rather a possible remedy for breach of contract under certain circumstances. Mailo v. Chuuk, 13 FSM R. 462, 472 n.7 (Chk. 2005).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

If a party prevails upon its contract counterclaim and if none of the contract money damage remedies are applicable, specific performance is a possible remedy, even if the party has not prayed for it since, except for default judgments, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Since specific performance, even when an unlikely remedy, is dependent upon the success of a breach of contract counterclaim and could be awarded even if it were dismissed, the dismissal of what is essentially a part of the prayer for relief will be denied. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A common remedy for the breach of a land contract is specific performance – the transfer of the land to be acquired – since land is considered unique. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages – expectancy, or reliance, or restitution money damages – are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

The court cannot order the specific performance that the plaintiff would receive his "expectancy" – the land that he was to have received in exchange when the defendants do not have the land to exchange. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Specific performance is a contract remedy that is available only when the usual measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 567 (Pon. 2013).

Any court order enforcing the specific performance of a contract right to exclusive possession of a factory must await a final judgment on the merits. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 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).

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).

The equitable remedy of specific performance is where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, or when damages cannot be computed. Harden v. Inek, 19 FSM R. 244, 251-52 (Pon. 2014).

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, when damages cannot be computed, or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Specific performance is available only when the usual contract measures of damages, expectancy, restitution, or reliance money damages, are inadequate compensation or cannot be computed or when a substitute cannot be purchased. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

By ordering the promisor to render the promised performance, the court attempts to produce, as nearly as is practicable, the same effect as if the contract had been performed, but a court will not order a performance that has become impossible, unreasonably burdensome, or unlawful, nor will it issue an order that can be frustrated by the defendant through exercise of a power of termination or otherwise. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

– Third-Party Beneficiary

A third person may, in his own right and name, enforce a promise made for his benefit even though he is a stranger both to the contract and to the consideration. This concept, originally an exception to the rule that no claim can be sued upon contractually unless it is a contract between the parties to the suit, has become so general and far-reaching in its consequences as to have ceased to be an exception, but is recognized as an affirmative rule, generally known as the third-party beneficiary doctrine. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141 (Chk. 1997).

When the third-party beneficiary is so described as to be ascertainable, it is not necessary that he be named in the contract in order to enforce the contract. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 141-42 (Chk. 1997).

Where a contract is made especially for the benefit of a third person he may enforce it directly against the promisor. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

An intended third party beneficiary may enforce a settlement agreement not to seek further compensation from the third party even though not all the compensation agreed to has been paid when the settlement agreement clearly contemplated that the compensation might be tardy and provided a remedy for such an occurrence. Mailo v. Penta Ocean Inc., 8 FSM R. 139, 142 (Chk. 1997).

A third party beneficiary can only recover if he is an intended beneficiary of the contract; he may not recover if he is only an incidental beneficiary of that contract. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for a third person's benefit is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

When a contract's parties did not enter into that agreement primarily to benefit another, they were seeking to benefit themselves, and when their purpose was not to give the bank the benefit of their bargain, the bank is not the agreement's intended beneficiary and has no right to enforce that agreement. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 75 (Pon. 2001).

A third party beneficiary can only recover if he is an intended beneficiary of a contract. The determining factor as to a third party beneficiary's rights is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the contract's terms as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 633 (Pon. 2002).

A third person can, in his own name and claiming his own right, enforce a promise made to benefit him regardless of the fact that he is a stranger to the contract and the consideration. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 228 (Pon. 2002).

A third person may enforce a contract for his own benefit when he is a stranger to the contract if the contract shows the parties intended to benefit the third person. The question of the parties' intent is generally one of construction of the contract, and this intention is determined by the contract terms as a

whole, construed in light of the circumstances of the contract's making and the parties' purpose. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

When a third-party beneficiary can be ascertained from the contract, he need not be named therein. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

A claimant may enforce a loan contract and require payment by the lender if he can prove that he was a third-party beneficiary of the loan contract. He must, however, sustain the essential elements of a third party beneficiary claim. There must be a legally enforceable contract, and the parties must have intended that the third party be benefited by the contract's performance. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239 (Pon. 2003).

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).

When, if the bank had met its obligation under the loan agreement the suppliers would have been fully paid upon completion of the project, the bank is liable to the suppliers. But since the bank, not the borrowers, made the promise not to disburse the loan proceeds until proof of payment to the suppliers, it follows that the suppliers may enforce the promise against the bank but not the borrowers because, at most, the borrowers may have had an unspecified duty to participate in the verification process, which is insufficient to render them liable to the suppliers as intended third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 240 (Pon. 2003).

The absence of any express duty in a construction contract to insure the payment of the suppliers means that as a matter of law the parties to the construction agreement did not intend the suppliers to be third-party beneficiaries. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

When a party is precluded from contesting its liability on an oral agreement as a result of its willful, bad faith discovery misconduct and when the plaintiffs' damages are also fully awardable under the plaintiffs' third-party beneficiary claim quite apart from any liability under the agreement, the party's contention that it is not liable under the agreement is wholly lacking in merit. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241 (Pon. 2003).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for \$3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

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).

A corporation has no valid cross-claim against a co-party and its cross-claims will be dismissed when it was not a party to the lease upon which the cross-claims are based and was not named as an intended third-party beneficiary in the lease. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

The usual reason for determining whether a non-contracting party is an intended third-party beneficiary to a contract is when that beneficiary is seeking to enforce some favorable contract provision or to collect damages for the contract's breach. This is because a third-party beneficiary can enforce a contract if it is an intended beneficiary of the contract, but it cannot if it is only an incidental beneficiary. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 & n.23 (Pon. 2011).

When none of the four states, the entities that would normally assert third-party beneficiary status, are parties to the action; when the contract itself is plain and unambiguous; and when all of the issues in the declaratory judgment request are also before the court in the parties' direct actions, the court sees no need for a declaratory judgment on whether the four states are third-party beneficiaries of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

There is no hidden third-party beneficiary contract between an insurer and its insured for the benefit of a salvor when there is a contract between the salvor and the insurer in plain view. No discovery is needed to determine its existence and terms. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

When it is unclear what testimony or evidence forms the basis for the plaintiff's third-party beneficiary cause of action, she will not prevail on the claim. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

– Undue Influence

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 126 (Pon. 1999).

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).

– Unilateral Contract

An option contract is a unilateral contract where an offer is made and the offeree is invited to accept by rendering a performance instead of promising something in return. Once the offeree either tenders or begins the invited performance, the option contract is created. The offer then becomes irrevocable. Kihara Real Estate, Inc. v. Estate of Nanpei (I), 6 FSM R. 48, 53 (Pon. 1993).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos.

2014).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

COSTS

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

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the 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).

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).

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

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).

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).

Costs are not synonymous with a party's expenses. Only certain types of expenses are cognizable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

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).

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).

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).

While costs cannot be awarded against the FSM, allottees are chargeable with costs of action when the allottees have interests sufficiently distinct from the FSM to confer on them standing in their own right. The rule prohibiting the trial court from charging the FSM with costs of this action does not prohibit the trial court from charging allottees with costs. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Affirmed Rule 37 sanctions are considered costs that should be included in the money judgment and bear nine percent interest from the date judgment is entered until paid. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Taxation of costs is not an additional award for the prevailing party, but is a reimbursement to the prevailing party of actual expenses (costs) incurred. But costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. This is true even when the litigants have successfully recovered under a private attorney general theory. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

When the appellants successfully sought to reverse trial division rulings in one appellee's favor and since the other named appellees were nominal parties unaffected by the appeal, all costs awarded the

appellants will be taxable against that one appellee. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

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).

Costs are not synonymous with a party's litigation expenses since only certain types of expenses are cognizable as Rule 54(d) costs. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.3 (Yap 2010).

A costs award is not an additional award to the prevailing party but is a reimbursement to the prevailing party of certain actual expenses (costs) incurred. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (App. 2011).

The point of awarding costs is to award the prevailing party as a part of the final judgment, aside from reasonable attorney's fees, which may be awarded only by statute. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. An award of fees and costs thus involves the party, not the particular firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

The point of a costs award is not to make an attorney or his law firm whole, but to make the prevailing party whole. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (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).

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).

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).

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court's order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A motion to try the plaintiff's remaining claim in a Pohnpei venue will, in the court's discretion, be denied when the venue statute required that he originally file his complaint in Chuuk because Chuuk was the state in which all the defendants could be found and the statute favors convenience for the defendants over convenience for the plaintiff. But because transporting the Pohnpei witnesses to Chuuk would work a distinct hardship on the plaintiff, the court will allow him three months to depose all the needed Pohnpei witnesses in order to preserve their testimony for trial and if he prevails at trial, the expenses of these

depositions shall be taxed as costs payable by the defendants. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

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).

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

– Allowed

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).

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

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

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

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).

Appellate Rule 39(c) permits the recovery of costs for producing necessary copies of briefs by word processor or photocopier, but not the costs for producing the original. The maximum amount allowable for word processed copies of briefs is limited to the amount allowed for photocopy services. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs for printing and copying are expenses that traditionally have been included within costs that are awarded to prevailing parties. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 224 (Chk. S. Ct. App. 2001).

When, service was done by servers employed at various times by plaintiffs' counsel, but who were duly appointed process servers and charged separate fees for the service, they were acting as private process servers. Fees charged by private process servers may be recoverable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Deposition costs will be allowed when the transcription was done and the deposition was admitted into evidence at trial even though the documentation for the deposition charge was a check made payable to an

attorney in the Philippines, and noted as such on the check stub. Amayo v. MJ Co., 10 FSM R. 371, 385-86 (Pon. 2001).

Service costs are always allowable to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Transcript and copying expenses are allowable costs when they represent payments to others for that service. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Costs that have been awarded in the FSM include service costs, transcript and copying costs when they represent payment to others for services, and reasonable travel expenses when there is a showing of no attorney available on the island where the litigation is taking place. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

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).

A prevailing party is entitled to costs taxable by FSM Civ. R. 54(d), such as expenses for service of process and service of subpoenas. Uehara v. Chuuk, 14 FSM R. 221, 228 (Chk. 2006).

A prevailing party will be allowed costs for depositions. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fees charged by private process servers may be recoverable as costs, because service costs are always allowable to the prevailing party. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Any expenses actually incurred in copying needed documents in the record will ultimately be taxed as costs to be borne by the non-prevailing party(ies) once the court has rendered its appellate opinion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award as costs a prevailing party's reasonable travel expenses for its attorney. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Deposition costs will be allowed when the transcribed deposition was admitted into evidence at trial. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The expense of a trial transcript is taxable when that transcript is necessarily obtained for use in a trial, particularly when the trial was long and the issues were complex. People of Rull ex rel. Ruepong v. M/V

Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 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).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

When the prevailing parties' counsel's travel expenses were necessarily incurred for services which were actually and necessarily performed, his travel expenses will be awarded as costs because the court may allow and tax any additional items of actual disbursement, other than fees of counsel, which it deems just and finds to have been necessarily incurred for services which were actually and necessarily performed for the prevailing party. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Reasonable travel costs are allowable when there is a showing that no counsel is available on the island where the litigation took place, but photocopying expenditures are generally disallowed, especially here where it cannot be determined what portion of those expense were incurred in bringing this action, and state court appellate filing fees are also disallowed since they are another court's filing fees and recoverable in that court. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Service costs are awarded as a matter of course to the prevailing party. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Service of process expenses are always allowable as costs to the prevailing party. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Plaintiffs awarded \$500 damages are, as the prevailing party, also entitled to reimbursement of the court's \$10 filing fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Service costs are always allowable to the prevailing party. A prevailing party is entitled to costs taxable by FSM Civil Rule 54(d), such as expenses for service of process and service of subpoenas and service of process costs may be apportioned among the defendants. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 151 (Pon. 2010).

The \$200 for service of a writ of attachment and levy; the \$100 for Yapese translation of the class notices; and the \$238.75 for the required publication of legal notice are expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of a class action and are expenses which would have been taxable as Rule 54(d) costs if such costs had been taxed separately. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Photocopying costs may be allowed if they represent payments to others for that service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.4 (Yap 2010).

Expenses to travel to the case's venue have usually been allowed as costs when there has been a showing that there were no local attorneys or law firm available. This is a sound principle which should also be followed in awarding class action expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206-07 (Yap 2010).

Costs for service of process and service of subpoenas are routinely allowable to the prevailing party under Civil Rule 54(d). Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Service of process expenses are an exception in that they can always be awarded as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award a prevailing party its attorney's reasonable travel expenses. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

The court is particularly inclined to view travel costs as reasonable when the attorney's overall travel expenses were reasonable and the actual expenses were pro-rated proportionally with other clients on whose behalf the attorney also traveled. The court is not inclined to grant any travel costs that are not prorated. Kaminanga v. Chuuk, 18 FSM R. 216, 221 n.4 (Chk. 2012).

Service of process costs will be allowed when the plaintiff's attorney's fee request states that his attorney reviewed the affidavits of service of the complaint on five named persons and on two national government offices and this corresponds to the \$140 (\$20 × 7 services of process) sought for service of the summons and complaint. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

When no explanation is made of why trial subpoenas were served twice but when it is apparent from the file that the duplicate service was necessitated by a change in the trial date after the first service was made, the full request for service of trial subpoenas will be allowed. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (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).

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

The clerk will tax costs of \$91 in expenses for reproducing and serving the prevailing appellant's briefs when that amount was verified and appears reasonable. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Since notice by advertisement in newspapers is required for *in rem* actions against vessels, those expenses will be allowed as costs when adequately documented. Pohnpei v. M/V Ping Da 7, 20 FSM R.

75, 79 (Pon. 2015).

Costs for service of process and service of subpoenas are routinely allowed to the prevailing party under Civil Rule 54(d). Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When adequately documented and both reasonable and necessary, a corporation search fee will be allowed as a cost since it is important that the correct parties be named as defendants. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Translation expenses are generally allowed as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

A prevailing party will usually be allowed costs for depositions unless they are shown to be unnecessary. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When the experts' research and reports were necessary and indispensable for the plaintiff to establish and the court to grant a default judgment and the fees were appropriate and not excessive, they will be allowed as taxable costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79-80 (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).

– Disallowed

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

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

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

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

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

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Costs that are an avoidable consequence of the prevailing party's actions will be disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 & n.1 (Chk. 1999).

Expenditures for photocopying, toll phone calls between lawyers, postage and courier services are disallowed. The extra expense of first class air travel is also disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

On appeals, copying costs are disallowed to the extent that they exceed those generally charged for such work in the area where the clerk's office is located, in this case – Pohnpei, where the FSM appellate clerk's office is located. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Expenses for postage and courier services are disallowed. They are not a part of the usual costs recoverable under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs are customarily awarded the prevailing party. However, costs for service on those defendants who were prevailing parties are not allowed to the plaintiff. Nor are costs for service in and filing fee for the case originally filed in state court allowed as costs are to be awarded only for the costs in this case to the prevailing party in this case. Estate of Mori v. Chuuk, 10 FSM R. 123, 125 (Chk. 2001).

Costs for an election defendant's airfare will be denied when it is for an uncertain amount and no evidence of this expense been provided to the court and when it is an expense he would have incurred anyway, because he would have had to return shortly from Honolulu to take his seat in the Legislature, and because it is an expense he would not have incurred if he had not voluntarily left Chuuk for Honolulu. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Counsel's travel expenses to and from Pohnpei for litigation on Pohnpei may not be awarded as costs when counsel maintains a Pohnpei office and is thus local counsel. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When no substantive law or contractual provision would permit the plaintiff to recover the type of costs he seeks, those costs will not be included in the judgment. Walter v. Damai, 12 FSM R. 648, 650 (Pon.

2004).

When insufficient information has been provided concerning the costs set out in an affidavit to enable the court to make an award of costs, none of these costs will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

When an affidavit sets out costs totaling \$1,605.15, but no description is provided for the individual amounts beyond the notation "direct expense," the court can make no determination whether these expenses constitute awardable costs and none will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Fax and long distance telephone charges are not recoverable as costs. Copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 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).

When a successful litigant has made no showing that the \$120 in copying costs he seeks were expenses incurred for copying done outside of counsel's office, this item of costs will be denied. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 527 (Pon. 2005).

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).

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the unavailability of local counsel. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fax and long distance telephone charges are not recoverable as costs, but copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

POL and transportation costs for the plaintiffs in their efforts to meet with the defendant to come to a resolution of this matter is a type of cost that is not normally recoverable. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Prevailing plaintiffs cannot be awarded \$1,000 for bringing the law suit since this type of cost is not normally awarded and no evidence of what was included in the \$1,000 was provided. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 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).

A \$49.28 "court filing fee" will be disallowed when it is unexplained and since another court's filing fee will not be awarded as a cost. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The \$25 cost for a certificate of good standing will be disallowed as a cost even though it was a necessary expenditure in order to apply to appear *pro hac vice* because it is considered part of overhead. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenditures for photocopying, toll phone calls, faxing, postage, and courier services are disallowed as costs. Internet expenses fall in the same category and are therefore also disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Law library research charges also fall into this category and will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenses not adequately explained are disallowed as costs, as are expenses that are either overhead items or are for personal use. "Working meals" are not allowed as costs since if that is what they were, the attorney was compensated for the time spent working. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74-75 & n.8 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

When an expert witness's research or testimony was not crucial to the resolution of any issue, but was helpful only to estimate the market cost for protein needed to replace the fish not harvested and the expert's work on this point relied on another expert witness's factual research for which that other expert billed \$1,265.70, the court may find that \$1,500 would be a fair and reasonable cost for the value of the expert's work that was indispensable to the resolution of the value of the lost fish harvest issue. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Expenditures for toll phone calls, postage, and courier services are disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. 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).

Photocopying charges are generally disallowed as costs unless those charges represent payments to others for that service and are not for the cost of copying within the law office. Carlos Etscheit Soap Co. v.

McVey, 17 FSM R. 148, 151 (Pon. 2010).

Extra charges for the attorney's gross revenue taxes on costs are disallowed. Gross revenue taxes are the attorney's responsibility and not the responsibility of the attorney's client or of an adverse party to whom the fee may be shifted. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 152 (Pon. 2010).

The \$80.50 listed as purchases of beer, bottled water, and the like from a Yap hotel mini-bar; the \$2.95 for DVD rental; \$34 listed as "no receipts (investigator's beer)" are disallowed since they are not expenses reasonably and appropriately incurred in the prosecution of the class action. The \$16.95 listed as breakfast and lunch "no receipts" is disallowed since it is not adequately documented. The \$111.91 for groceries purchased in a Guam supermarket is unexplained and therefore disallowed. The \$408.80 in charges for internet access from a Yap hotel, even if used for occasional legal research or case-related e-mail, are excessive and therefore disallowed. The \$620.50 claim for "expenses in the form of legal research subscription charges, and long distance phone charges" is undocumented and therefore disallowed and "legal research subscription," although since it is undocumented the court cannot be certain, appears that it may properly be part of overhead and not case specific. Also undocumented, and therefore disallowed, is \$521.25 in photocopying and postage fees for filing and service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The court has long followed the principle that when awarding costs, costs may be allowed for copying expenses which represent payments to others for that service, but not the cost of copying within the law office. So when there is no indication that a copying charge is for payment to others for copying services, that charge will be disallowed. Sandy v. Mori, 17 FSM R. 245, 246 (Chk. 2010).

An attorney's travel expenses to Chuuk will be denied as costs when the attorney's law firm maintains a law office on Chuuk even though the attorney did not reside on Chuuk and only made occasional trips to Chuuk from Pohnpei. Sandy v. Mori, 17 FSM R. 245, 246-47 (Chk. 2010).

Photocopying costs are disallowed unless it can be shown that the photocopying was done outside of the law firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

A "gross revenue tax" surcharge will be disallowed as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

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 review of the record shows that a transcript of a hearing was not necessary for the determination of the appeal, its cost would be disallowed even if the appellant had prevailed on appeal. Kaminanga v. Chuuk, 18 FSM R. 216, 222 (Chk. 2012).

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 nothing in the record indicates that the prevailing party ever timely filed his verified bills of costs with the appropriate court clerks and when it is now too late to file them, he has waived his right to the appellate costs by his failure to timely file verified bills of cost. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Unexplained costs are disallowed. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

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).

While, 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, even if attorney's fees could be awarded for vexatious actions during an appeal, an issue not decided, fees would not be awarded when, although much of the appellees' motion to dismiss was a petty attempt to avoid a ruling on the merits, the motion as a whole was not thoroughly unreasonable. 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).

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).

When there was no appellee in the case, there is no one to tax costs against. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

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).

The expense of service of the briefs will be disallowed. Postage is considered overhead and generally not allowed as a cost so that expenses for postage and delivery services are disallowed. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When an expert's fee was for an affidavit prepared in support of only a rejected damages claim, it will be disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (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).

Government expenses as a result of a ship grounding are not a cost of litigation and when they were neither plead as a cause of action nor prayed for as relief, these expenses are not recoverable either as costs or as damages in a default judgment since a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

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).

– Procedure

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

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

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).

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).

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).

Rule 54(d) permits costs to be allowed against the non-prevailing party. Accordingly, a prevailing plaintiff may request costs to be awarded by filing an affidavit. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Transcript costs are not taxable by the appellate division, but (along with any fees for the appellants' filing of the notices of appeal) are taxable in the trial division. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Since between a supporting affidavit and the returns of service filed by the process servers, it should be

apparent on the record that the claims for service costs represented payments to others for service, and since this has been sufficient when cost awards for service have been sought, an attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service will suffice although the better practice would be to also file receipts with the costs request rather than relying on the trial court to consult the record to see who performed the service. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Costs are generally taxed against, not for, an unsuccessful appellant unless otherwise ordered, and appellate costs are ordinarily taxed in the appellate division except that transcript fees and the costs of the reporter's transcript, if necessary for the determination of the appeal are taxable in the trial division by the prevailing appellate litigant. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

A service cost request has always been sufficient when the request included the attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service even though the better practice would have been to also file receipts with the request rather than relying on the trial court to consult the record to see who performed the service. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

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 for a reporter's transcripts are taxed in the court appealed from in the case that was appealed. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A party who desires costs to be taxed in an appeal case shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Nena v. Saimon, 19 FSM R. 393, 394-95 (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).

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).

When a party desires that appellate costs be taxed, the party must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed, but when there is opposition, the matter is usually referred to the court or a judge thereof. In re Sanction of Sigrah, 19 FSM R. 396, 397-98 (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).

A prevailing party who desires costs to be taxed must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of the appellate judgment. The appellate clerk will act on the bill of costs, at least where no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 (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).

– When Taxable

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

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

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

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

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

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

Costs may be allowed to a party prevailing against an indigent or *in forma pauperis* plaintiff who raised irrelevant matters and engaged in vexatious procedures or whose actions were frivolous or malicious. Damarlane v. United States, 7 FSM R. 468, 469-70 (Pon. 1996).

Although it is especially important to avoid any approach calculated to favor the wealthy and deprive poor persons of access to the courts, that principle should not operate to penalize the indigents' opponent whose costs are increased because of frivolous claims and proceedings which are prolonged by repetition of contentions already ruled upon. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Unless the court directs otherwise, costs are allowed as of course to the prevailing party. A prevailing party is the one in whose favor the decision is ultimately rendered when the matter is finally set at rest, and does not depend upon the degree of success at different stages of the suit. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

When the trial court decides the matter on the merits, based on the evidence, in favor of the defendants and the plaintiffs are not granted a permanent injunction, the defendants are prevailing parties who are appropriately awarded costs. Damarlane v. United States, 8 FSM R. 45, 54 (App. 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).

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).

A prevailing party in an appeal is routinely entitled to its costs and when an appeal is dismissed, costs are to be taxed against appellant unless the parties otherwise agree or court orders otherwise. Santos v.

Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholyamay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

Costs are generally allowed as of course to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 354, 362 (Chk. 2001).

While costs are allowed as of course to a prevailing party, costs against the FSM, its officers, and agencies are imposed only when authorized by statute. Udot Municipality v. FSM, 10 FSM R. 498, 501, 502 (Chk. 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).

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).

Generally, unless the court directs otherwise, prevailing parties are entitled to costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Determination of costs awarded to prevailing parties is generally a matter within the trial court's discretion, and a trial court has jurisdiction to issue an order assessing costs, even after a notice of appeal has been filed. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Rule 54(d) presumes that costs will be allowed to the prevailing party. But this presumption may be overcome. The burden is on the unsuccessful party to show circumstances sufficient to overcome the presumption in favor of allowing costs to the prevailing party. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Although a trial court has discretion when awarding costs, the discretion is narrowly confined because of the strong presumption created by Rule 54(d) that the prevailing party will recover costs. Generally, only the prevailing party's misconduct worthy of a penalty or the losing party's inability to pay will suffice to justify denying costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321-22 (Pon. 2003).

The presumption that the prevailing party will recover costs has been overcome and costs denied where there is a wide disparity between the parties' economic resources, particularly when the non-prevailing party is indigent. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 322 (Pon. 2003).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

The principle of not imposing costs on losing indigents may appear to penalize solvency and to encourage other lawsuits against successful businesses because there is no risk of incurring costs if the action fails. However, this principle only applies when the action is pursued in good faith. Costs may be taxed when an indigent plaintiff's case is frivolous or malicious or when he has raised irrelevant matters and engaged in vexatious procedures. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 2003).

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).

Rule 68 provides that if a defendant makes an offer of judgment, and the judgment ultimately obtained is not more favorable than the offer, then the offeree must pay the costs accrued after the offer. It does not apply when the offers of judgment are for the amount claimed in the original complaint and the case is tried and judgment entered for the higher amount claimed in the amended complaint. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

An award of costs depends upon a finding of reasonableness by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Rule 54(d) presumes that costs will be allowed to the prevailing party, unless the court directs otherwise. Accordingly, a prevailing plaintiff may file and serve his requests for costs to be taxed against the defendant, who shall respond to the request within 10 days of the request's service. The court shall thereafter rule on the request for allowance of costs. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

Costs are awarded as a matter of course to the prevailing party as a part of the final judgment. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

When a case is dismissed at the close of the plaintiff's case-in-chief, the defendants, as prevailing parties, are entitled to their costs of action. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Costs are awarded to prevailing parties as a matter of course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Prevailing parties are entitled to their costs on appeal. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Generally, costs cannot be awarded for or against the state government. Ruben v. Hartman, 15 FSM R. 240, 242 n.1 (Chk. S. Ct. App. 2007).

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).

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

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).

A successful process server's pay should not be dependent on a law firm's later litigation success. Poll v. Victor, 18 FSM R. 402, 405 n.1 (Pon. 2012).

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).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Plaintiffs, as the prevailing party, will be awarded their reasonable costs. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the appellants prevailed by having the permanent injunction – a final decision – against them vacated and they are now in a position where either they or the other side may ultimately obtain a final judgment in their favor on remand, they are thus prevailing parties for the purpose of the appeal and costs will be taxed in their favor. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

When the defendant is the prevailing party, it shall be awarded its reasonable costs. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the defendants are the prevailing party, they shall be awarded their reasonable costs. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

The general rule is that the prevailing party is entitled to costs per Rule 54(d), but Rule 54(d) also provides that "costs against the State of Chuuk, its officers, and agencies shall be imposed only to the extent permitted by law." Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543 (Chk. S. Ct. Tr. 2014).

When no written documentation was submitted to show that the plaintiff would be entitled to recover its costs if the plaintiff prevailed against the state agency in a civil suit and when no statute authorizes a plaintiff to recover costs on a breach of contract claim against the State of Chuuk, the court will deny the plaintiff's motion for costs. Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543-44 (Chk. S. Ct. Tr. 2014).

COURTS

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory Pacific Islands to the Federated States of Micronesia. Thus, the High Court's previous exclusive jurisdiction under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 57-58 (Kos. 1992).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM R. 53, 59 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory High Court appellate division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional government. Lonno v. Trust Territory (I), 1 FSM R. 53, 64-65 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). This jurisdiction is based upon the citizenship of the parties, not the subject matter of their dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. FSM Const. art. XI, § 6(b). In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

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

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that the FSM Supreme Court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-08. In re Nahnsen, 1 FSM R. 97, 106 (Pon. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

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

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of mandamus. 4 F.S.M.C. 117. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The FSM Supreme Court is not bound by decisions of United States courts; however, careful consideration should be given to United States decisions regarding court policies as the FSM national courts are modeled on those of the United States. Nix v. Ehmes, 1 FSM R. 114, 119 (Pon. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM R. 239, 244 (Pon. 1983).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 245 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 246 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. In re Iriarte (I), 1 FSM R. 239, 254 (Pon. 1983).

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which it is subject. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

The Trust Territory High Court should leave final interpretation of the Constitution and public laws of the Federated States of Micronesia to the Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 & n.1 (App. 1983).

As a general proposition, a court system resolves disputes by considering and deciding between competing claims of two or more opposing parties. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

It is thought that the judicial power to declare the law will more likely be exercised in enlightened fashion if it is employed only where the court is exposed to the differing points of view of adversaries. Thus judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Statutes governing procedures or decision-making approaches for Trust Territory courts might not apply to constitutional courts. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 204 (Pon. 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Courts have an affirmative obligation to avoid erroneous rulings and may not be bound by incorrect legal premises upon which even all parties rely. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

The FSM Constitution provides no authority for any court to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the national government in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM R. 95, 105-06 (App. 1989).

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

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

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).

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 the remanding appellate court has not mandated a hearing on remand, it is within the sound discretion of the trial court to decide whether or not to convene a post-remand hearing. FSM v. Hartman (I), 5 FSM R. 350, 351 (Pon. 1992).

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 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).

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A court has inherent powers to compel submission to its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM R. 150, 152 & n.1 (Pon. 1999).

Cases pending in a municipal court may be transferred to the Chuuk State Supreme Court trial division upon the request of any party and by order of the Chuuk State Supreme Court trial division. There is no authority for a municipal judge to transfer a case, sua sponte, to the Chuuk State Supreme Court without the request of any party. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

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).

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).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9

FSM R. 584, 586 (Chk. 2000).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifracim, 10 FSM R. 107, 110 (Chk. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, not a court whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

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).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is not a superior tribunal to the Pohnpei Supreme Court, although in certain circumstances the FSM Supreme Court appellate division is such a superior tribunal. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 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).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice, who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

It is the Chuuk State Supreme Court's duty to enforce the constitution and laws of the state and the state's 40 municipalities and to see that the constitutions of the several municipalities are protected against unwarranted interference by any state official, regardless of motivation. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

The Kosrae State Court has jurisdiction to issue writs and other process. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court is given rule making authority that operates only in the limited sphere of the

court's inherent authority to determine an orderly process for the disposition of cases that come before it for adjudication. Sigrah v. Speaker, 11 FSM R. 258, 262 (Kos. S. Ct. Tr. 2002).

The Chuuk Chief Justice must promulgate rules of evidence and rules governing the administration of all state courts, the regulation of the judicial profession, and practice and procedure in civil and criminal matters. Kupenes v. Ungeni, 12 FSM R. 252, 257 n.3 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The State of Kosrae's judicial power is vested in the State Court and such inferior courts as may be created by law. The Kosrae Land Court was established as an inferior court within the Kosrae State Court system. The State Court has jurisdiction to review all decisions of inferior courts. The Kosrae Constitution does not specify which division of the State Court is required to review decisions of inferior courts. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

The term "appellate court" is defined as the FSM Supreme Court appellate division. Kosrae State Court decisions may be appealed to the FSM Supreme Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 2004).

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 been passed by the Legislature and signed into law, no constitutional or statutory authority exists to authorize appeals from trial division to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 420 (Kos. S. Ct. Tr. 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 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. It is specifically authorized to govern appeal procedures for appeals from the Land Court and procedures for Land Court appeals to the State Court are established in the Kosrae Rules of Appellate Procedure. 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 later general court order supersedes an earlier one. Goya v. Ramp, 13 FSM R. 100, 105 n.2 (App. 2005).

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The appellate court cannot fault a judge for acting on a temporary restraining order application when it was filed since the assigned special trial justice was unavailable in the outer islands and the request for a temporary restraining order needed prompt action, but once the special trial justice again became available, the case should have been left to the special trial justice to act upon. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

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).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

New constitutional rules affecting procedures in criminal cases apply only to those cases which are pending on direct review or which are not yet final when the new rules are announced. Thus a new constitutional rule announced in a January, 2004 decision will apply to a May 2003 case still pending at that time. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When, contrary to the requirements of GCO 2002-13, the presiding justice questioned the claimants instead of the land assessor and the same series of questions were not asked of each unrepresented claimant, which is required by GCO 2002-13 in order to provide an equal opportunity to each claimant to present his or her claim and the reasons therefor, the non-compliance jeopardizes the fairness of the proceeding by providing one claimant better opportunity, through specified questions, to present his or her claim. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Courts have inherent power and obligation to monitor the conduct of parties and to enforce compliance with procedural rules. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Anyone is entitled to attend the Kosrae Land Court hearings on a parcel, whether or not they were provided personal notice for the hearing. All hearings at the Land Court are open to the public, as a basic cornerstone of the constitutional protections provided by our democratic government. Thus, even if persons had not been provided personal notice of the hearing on the parcel, and had received only public notice provided through posting or broadcast, they were still entitled to attend the hearing, and, if they were claimants they were permitted to present testimony at the hearing. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Violation of the statutory deadline to issue a Land Court decision does not affect the decision's validity. Its late issuance only serves as grounds for the issuing justice's removal or other discipline. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

Enforcement of a Chuuk municipal court judgment is properly sought from that court or from the Chuuk State Supreme Court, which has supervisory powers over the municipal courts, not from the FSM Supreme Court. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

The Kosrae Land Court should ensure the distribution to one or more heirs of the General Court Orders that one (or more) persons represent a group of heirs if they are not represented by legal counsel, and that govern the questioning of claimants not represented by legal counsel, so that they may receive notice and comply with the requirements before the hearing date. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alonso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

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 appellate division has jurisdiction to review all decisions of the trial division, of inferior state courts, and of the municipal courts. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM

R. 657, 662 (Kos. S. Ct. Tr. 2008).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. The rule, however, is not absolute, but is a principle of sound judicial administration that the first-filed suit should have priority absent special circumstances. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

The court with jurisdiction over the first-filed case may exercise its discretion to stay proceedings, under the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. The first-filed rule is neither absolute nor mechanically applied but advances the inherently fair concept that the party that commenced the first suit generally ought to be the party to obtain its choice of venue. Mori v. Hasiguchi, 16 FSM R. 382, 384 (Chk. 2009).

When this suit and a later-filed suit were both filed in the FSM Supreme Court trial division but in different venues, the first in Chuuk and the second in Pohnpei; when the defendants are all present in Chuuk but have adopted a position analogous to an interpleader in that they are subject to competing claims for the same property and will comply with any court determination about its ownership; when the central issue to be resolved before any final judicial order is whether a bill of sale is enforceable or should be rescinded or reformed; and when this central issue is directly joined in the Pohnpei suit where the stock transfer and the events surrounding it took place, where the transferor and transferee both reside, and where the evidence and witnesses are present, this, at least to resolve this crucial central issue, would (based on judicial economy and economy of time and effort for counsel and for the litigants) favor a Pohnpei venue if it can be resolved there without undue delay. Since, even though complete relief for all the parties in this case cannot be granted in the Pohnpei suit, the Pohnpei suit should expeditiously resolve this suit's central issue without imposing hardship on the parties and leave this court to dispose of the peripheral issues, adjudication of this first-filed action will be stayed pending the resolution of the later-filed FSM Supreme Court suit in Pohnpei. Mori v. Hasiguchi, 16 FSM R. 382, 385-86 (Chk. 2009).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. The rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 277, 280 (Chk. 2010).

The FSM Supreme Court trial division has no authority to tell the Chuuk State Supreme Court whether and how it should enforce its own ruling when the case in which the ruling was made is not currently before the FSM Supreme Court. Narruhn v. Chuuk, 17 FSM R. 289, 300 (App. 2010).

The general rule is that the first-filed lawsuit has priority over any other case involving the same parties and issues, even if one is filed later before a court that could also take jurisdiction. This rule, although not absolute, is a principle of sound judicial administration under which the first-filed suit should have priority absent special circumstances. This salutary principle avoids unseemly conflicts that might arise between courts if they could, at the same time, make inconsistent or contradictory decisions relating to the same dispute and it protects litigants from the expense and harassment of multiple litigation. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in

which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus in a proper case. The Chuuk Judiciary Act gives all state courts the power to issue all writs for equitable and legal relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The Chuuk State Judiciary Act gives each Chuuk court 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, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

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).

The Kosrae State Court Chief Justice is not acting in excess of his jurisdiction by appointing himself to sit as a temporary judge on a Land Court case when all the Land Court judges are disqualified when the Land Court is an inferior court within a unified state court system and since there is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. Heirs of Tulenkun v. Alikxa, 19 FSM R. 191, 194-95 (App. 2013).

One FSM Supreme Court trial division justice does not have subject matter jurisdiction to set aside orders entered in another separate trial division case, nor does he hold subject matter jurisdiction to grant injunctive relief against another trial division justice. 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 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 Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission,

before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that would also have jurisdiction, but when the court has already ordered that the two cases be consolidated, the issue has become moot. Salomon v. Mendiola, 20 FSM R. 138, 142 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae State Court has the power to issue all writs and other process, and may entertain a petition for a writ of mandamus. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

– Judges

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Judges on the FSM Supreme Court are bound by the American Bar Association Code of Judicial Conduct incorporated into law by 4 F.S.M.C. 122. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

The Judiciary Act of 1979, in Title 4 of the FSM Code, and the Judiciary Article, article XI of the Constitution of the Federated States of Micronesia govern the structure and powers of the FSM Supreme Court, and make no provision for appointment of special judges to sit with a justice of the FSM Supreme Court trial division. 5 F.S.M.C. 514 has no application to proceedings before the FSM Supreme Court. In re Raitoun, 1 FSM R. 561, 564-65 (App. 1984).

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).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act

on one particular case. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

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

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM R. 388, 392-93 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM R. 398, 400-01 (Pon. 1992).

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM R. 293, 297 (App. 1993).

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

Since the acts of a de facto judge are valid against all except the sovereign and generally not subject to collateral attack, the proper method to question a de facto judge's authority is through a quo warranto proceeding brought by the sovereign. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

The view that the de facto doctrine, where applicable, should operate to prevent challenges to the authority of special judges, acting under color of right, by private litigants, in the proceedings before them is better suited for the social and geographical configuration of Micronesia. Hartman v. FSM, 6 FSM R. 293, 299 (App. 1993).

Pursuant to the Chuuk Judiciary Act judges in Chuuk are required to adhere to the standards of the Code of Judicial Conduct of the American Bar Association which require judges to resign from judicial office upon becoming a candidate for a non-judicial office. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 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).

Judges, faithful to their oath of office, should approach every aspect of each case with a neutral and objective disposition and understand their duty to render decisions upon a proper record and to disregard earlier judicial contacts with a case or party. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (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).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Issuance of appellate opinions is a function normally performed by judges, and the timing of a decision is normally, if not always, a judicial decision. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

The constitutional language does not require that a Chuuk State Supreme Court justice sit on an appellate panel when none is available, only that no more than one can sit under any circumstance. But if there are Chuuk State Supreme Court justices who are not disqualified, one must preside over the panel in order for it to be properly constituted. If needed, a justice, who is not disqualified, has a professional and constitutional obligation to serve. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

When a special trial division justice was appointed by the Chief Justice pursuant to the procedure contained in two 1994 general court orders, the special trial division justice appeared to be a properly installed judicial officer, and even if the special trial division justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

The acts of a judge de facto are generally valid and not subject to collateral attack. Alafanso v. Suda, 10 FSM R. 553, 556 (Chk. S. Ct. Tr. 2002).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 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).

An appellate panel's composition of three temporary justices is proper in the sudden absence of the presiding Chuuk State Supreme Court justice when the other Chuuk State Supreme Court justices were disqualified and the matter could not wait for the original presiding justice's recovery from illness because the court was required by statute to decide on the contested election prior to April 15, 2003 and therefore a third temporary justice had to be appointed immediately. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 473 (Chk. S. Ct. App. 2003).

No one is eligible to serve as the Chuuk Chief Justice or as an associate justice unless at least 35 years

of age, was a born Chuukese, has been a resident of the State of Chuuk for at least 25 years, is an FSM citizen, and has never been convicted of a felony. Other qualifications may be prescribed by statute. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.1 (Chk. S. Ct. Tr. 2003).

By general court order, when the other justices are disqualified or have been recused or there is a special need to have a special justice from outside the court to hear a case to avoid the appearance of impropriety, the Chuuk Chief Justice may appoint special justices (who meet the same requirements for the appointment of an appellate division temporary justice) and assign cases to him. Kupenes v. Ungeni, 12 FSM R. 252, 256 n.2 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court prefers to adopt the majority rule in the United States that a temporary judge cannot be a judge *de facto*, because a temporary judge merely serves for a particular case, whereas a judge *de facto* makes claim to a judicial office under color of authority. This majority rule, in defining a judge *de facto*, requires that a judge *de facto* have all of the qualifications to hold the office which he claims under color of authority, a requirement which cannot, as a matter of definition, apply to temporary judges, who have no claim to the office of judge *de jure*, but rather occupy it on a temporary basis, case by case. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

A judge *de facto* occupies the position under "color of authority," which has been defined in this context as follows: "A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Kupenes v. Ungeni, 12 FSM R. 252, 260 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court adopts the U.S. majority rule that an special trial justice appointed pursuant to Chuuk GCO 2-94 is a temporary judge, a *judge pro hac vice de jure*, and that if the promulgation of GCO 2-94 is unconstitutional, then all acts of the special trial justice in the cases to which he has been assigned, are void and a nullity. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

The Chief Justice of the Chuuk State Supreme Court is the administrative head of the state judicial system, and he may appoint and prescribe duties of other officers and employees of the state judicial system. He is also obligated to promulgate rules governing the administration of all state courts, the regulation of the judicial profession, and practice and procedure in civil matters. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

When acting in his rule making capacity, the Chief Justice acts in a legislative capacity. Rules of court, properly promulgated, and not exceeding the limitation of the rule-making authority, have the force of law. Kupenes v. Ungeni, 12 FSM R. 252, 261 (Chk. S. Ct. Tr. 2003).

Chuuk GCO 2-94 authorizing the appointment of special trial justices is a constitutional exercise of the Chief Justice's rule-making authority since there are no express constitutional limitations on that authority other than that permitting the Legislature to amend rules promulgated by the Chief Justice. Kupenes v. Ungeni, 12 FSM R. 252, 263 & n.10 (Chk. S. Ct. Tr. 2003).

In order to qualify as a temporary justice on a Chuuk State Supreme Court appellate division panel, the temporary justice must be either 1) a justice of the FSM Supreme Court, 2) a judge of a court of another FSM state, or 3) a qualified attorney in the State of Chuuk. Judges of other courts and qualified attorneys, are sufficiently competent in the law to sit as members of a Chuuk State Supreme Court appellate panel, regardless of their nationality or citizenship. Kupenes v. Ungeni, 12 FSM R. 252, 264 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate

department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

In appointing a special trial justice, the Chuuk Chief Justice is not appointing a temporary associate justice. A special trial justice, does not make any claim to the office of associate justice. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

The ABA Code of Judicial Conduct (1984 ed.) is the judicial ethics provision in effect in Kosrae today. Anton v. Cornelius, 12 FSM R. 280, 285-86 (App. 2003).

The Constitution provides that a Supreme Court justice may be removed from office for treason, bribery, or conduct involving corruption in office by a vote of the members of Congress. When a justice of the Supreme Court is removed, the decision must be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive. The Constitution draws no distinction between permanent justices or specially assigned justices for purposes of removal. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

Litigants in a case presided over by a specially assigned justice are entitled to a justice who is no less independent than a permanent justice. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

A trial justice specially assigned to a case by the Chief Justice has no authority to assign that (or any case) to the Chief Justice even if he were not disqualified. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

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).

A judge's failure to rule, that is, his failure to exercise his discretion is itself an abuse of the judge's discretion because a court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Ruben v. Petewon, 13 FSM R. 383, 390 n.2 (Chk. 2005).

When an oral motion to disqualify one of the panel members was made, the other two members constitute the deciding majority in an appellate case and can decide a motion to disqualify the third member. Ruben v. Petewon, 14 FSM R. 141, 143-44 & n.1 (Chk. S. Ct. App. 2006).

The Chuuk Constitution does not include a provision allowing the Legislature to add further qualifications to those required for temporary appellate justices. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice. The Legislature thus cannot add it by statute. When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Ruben v. Petewon, 14 FSM R. 141, 144, 145 (Chk. S. Ct. App. 2006).

The Legislature cannot add qualifications for appellate division justices to those found in the Chuuk Constitution, article VII, section 5(b). Thus the statutory requirements that a temporary appellate justice be either a graduate of an accredited law school in that jurisdiction or have at least twenty years experience practicing law, is contrary to the Chuuk Constitution and cannot be enforced. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

A writ of prohibition directed to a Chuuk State Supreme Court trial division justice is not a matter that the justice is barred from hearing when it was not heard by such justice in the Chuuk State Supreme Court trial division, and in an FSM Supreme Court case, the justice was careful not to decide anything on the merits. Not having expressed an opinion on the merits or done more than issue a preliminary injunction, a justice is not precluded from sitting on a panel considering a petition for writ of prohibition. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

If the Chief Justice is removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case will appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

There is no authority that would require the justice making the appointment of temporary Chuuk State Supreme Court appellate division justices to make the appointments of temporary appellate justices in the order of seniority. Ruben v. Petewon, 14 FSM R. 146, 149 (Chk. S. Ct. App. 2006).

Even if a special trial justice were not a lawfully appointed judicial officer, that is, a judge de jure, he was a de facto judicial officer since a de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. A judge de facto's acts are generally valid and not subject to collateral attack. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

A judge de facto must have all the qualifications to hold the office which he claims under color of authority. A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. By color of authority is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the trial judge's original appointment as chief justice established his qualifications for the office and the trial judge physically possessed the office of chief justice on February 28, 2006 and on that day discharged the duties of the office and when the trial judge's color of authority stems from his original appointment as chief justice, the dispute relates not to the fact of the trial judge's appointment to the bench but rather concerns the exact length of the trial judge's appointment as chief justice. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

When the only relevant evidence in the record on appeal supports the conclusion that the judge's appointment extended through the day of February 28, 2006, as he was clearly acting under the color of authority vested with him by his original appointment as chief justice and not as an unknown usurper attempting to wrestle authority from its appropriate guardian, and when an additional source for the trial judge's color of authority is derived from the fact that he presided over the trial in this matter and twice scheduled the sentencing hearing to take place before February 28, 2006, all acts which he undertook without protest from any party, this is the type of situation contemplated by the de facto principle as a safeguard against the unnecessary interruption of public governance. Thus, even if it were true that the

trial judge's tenure with the court officially ended before February 28, 2006, the sentencing order of February 28, 2006 would remain valid as the act of a judge de facto. Tulensru v. Kosrae, 15 FSM R. 122, 129 (App. 2007).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

If by reason of the disability of the judge before whom an action was been tried, the judge is unable to perform the court's duties after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties unless the other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason the other judge may in his or her discretion grant a new trial. Salik v. U Corp., 15 FSM R. 534, 539 (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).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

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).

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).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference

and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When analyzing whether a judge was performing judicial acts, the factors determining whether an act by a judge is a "judicial" one relate to the nature of act itself (whether it is a function normally performed by a judge) and to the expectations of the parties (whether they dealt with the judge in his judicial capacity). Issuing eviction orders, denying motions, and the like are all acts or functions normally performed by a judge. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When the Pohnpei Supreme Court is a court of general jurisdiction and when it is undisputed that the Pohnpei Supreme Court has jurisdiction over cases that the plaintiff filed there since she filed those cases there for the very reason that that court had jurisdiction, the plaintiff cannot allege that a Pohnpei justice acted in complete absence of jurisdiction when he issued orders in her cases even though she clearly alleges that he acted in excess of his jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly, and a judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Since a judge is absolutely immune from liability for his judicial acts even if those acts were done maliciously or corruptly or in excess of his jurisdiction or if his exercise of authority was flawed by the commission of grave procedural errors, he is thus immune from a plaintiff's compensatory damages claims. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few common law doctrines were more solidly established than a judge's immunity for damages for acts committed within his judicial jurisdiction. Helgenberger v. U Mun. Court, 18 FSM R. 274,

283 (Pon. 2012).

A judge loses the cloak of judicial immunity in only two events: first, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. The first question is whether the acts were judicial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The factors determining whether an act by a judge is a "judicial" one and therefore one for which the judge is immune from civil liability relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The issuance of a bench warrant; the contempt finding; and, under U's constitutional setup, the impeachment trial, the conviction, the denial of the substitution of counsel, and the defendant's removal from office were all judicial acts, taken in a judicial capacity. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The second question in deciding whether judicial immunity exists is whether the judge acted in complete absence of all jurisdiction because judges cannot be held civilly liable for their judicial acts, even when those acts were in excess of their jurisdiction, or are alleged to have been done maliciously or corruptly, and judges are also absolutely immune from civil liability when they committed grave procedural errors in their exercise of authority. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court Trial Division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The structure of the FSM Court system dictates that as a practical matter a writ against a trial division court may only be issued by the appellate division. Therefore, a writ of mandamus or prohibition, even if characterized as an "injunction" or "setting aside an order" may not be issued by one trial division justice against another FSM Supreme Court trial division justice. Appellate Rule 21 writs of prohibition are the sole procedure available for seeking restraint of a trial court judge's actions in a pending case. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257-58 (Pon. 2014).

4 F.S.M.C. 124(2) by its own terms serves to disqualify a temporary justice only when the Congress taken an affirmative act of adopting a resolution after the justice has served at least three months, but 4 F.S.M.C. 124(2) cannot serve as a basis for disqualification of a temporary justice because the appellate division has ruled it to be in conflict with the FSM Constitution. FSM v. Halbert, 20 FSM R. 49, 51 (Pon. 2015).

Because the basis for the Urusemal v. Capelle court decision was its concern for safeguarding the independence of judicial decision making as envisioned in the FSM Constitution, the decision's reasoning is equally valid regardless of whether a temporary justice had previously sat on the FSM Supreme Court or is currently a judge of another court. FSM v. Halbert, 20 FSM R. 49, 51-52 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a

question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

Since the Chief Justice is statutorily required to give notice to the President and the Congress upon the appointment of any temporary justice, the absence of an "order of assignment" is not improper when a missive from the Acting Chief Justice was duly dispatched to Congress, apprizing that body of his designation of a judge to preside over the matter because Congress has provided the Chief Justice with the statutory authority to appoint temporary justices and Congress acted under its Constitutional authority to provide this statutory authority to the judiciary, the court need not exercise its concurrent rule-making authority; and because there is no pertinent rule which mandates issuance of a separate "order of assignment." FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227-28 (Chk. 2015).

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

Kosrae State Court judges are constitutionally required to retire upon attaining the age of sixty-five years. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 & n.2 (App. 2016).

– Records

A court's inherent supervisory power over its own records includes the discretion to seal those records if it determines that the public's right to access is outweighed by legitimate competing needs for privacy and confidentiality. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

A court will use a three step process designed to protect the public's interest in access to the its files to determine whether the records should be sealed: 1) the court will give the public adequate notice that the judicial records in question may be sealed; 2) the court will give all interested persons an opportunity to object; and 3) if, after considering all objections, the court decides that the records should be sealed, it will seal those records and state on the record the reasons supporting its decision. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

When the court has posted public notices throughout the state and no member of the public, nor any interested party, objected, and the court has found good cause shown, the records in a case may be sealed. In re Property of Doe, 6 FSM R. 606, 607 (Pon. 1994).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

It is the Kosrae State Court's statutory duty to certify Certificates of Live Birth and when the court has information that items on the certificate are incorrect, it will refuse to certify the certificate. In re Phillip, 11 FSM R. 243, 244 (Kos. S. Ct. Tr. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Certificate of Live Birth is a document with critical legal importance. It forms the foundation upon which other important legal documents are issued. Therefore, the Certificate of Live Birth must be issued in accordance with a procedure, based upon credible factual information supporting the person's date of birth and other information entered on the certificate. In re Phillip, 11 FSM R. 301, 302-03 (Kos. S. Ct. Tr. 2002).

In order to protect the validity and reliability of birth certificates issued by the Kosrae state hospital, the hospital is ordered to issue a Certificate of Live Birth when the necessary information is properly authenticated and verified. The subject person of the certificate may not provide the only information that is relied upon by the hospital. The hospital shall review existing hospital records, other government records and other reliable records to establish the accuracy of information entered into each Certificate of Live Birth. Certificates which do not contain accurate information shall not be certified by the Kosrae State Court. In re Phillip, 11 FSM R. 301, 303 (Kos. S. Ct. Tr. 2002).

In Kosrae small claims, a docket card is kept showing the pleadings, actions of the court, payments, or other reports and this docket card ordinarily constitutes the entire record. The plaintiff may state the nature and amount of the claim to the clerk who notes this on the docket card and the plaintiff signs this which, under the Small Claims Rules, constitutes the complaint. No other written pleading is required unless the court orders otherwise. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 641 (Kos. S. Ct. Tr. 2009).

– Recusal

No judge should sit in a case in which he is personally involved. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Canon 3C of the ABA Code of Judicial Conduct applies in the FSM by virtue of 4 F.S.M.C. 122. There is no hint that Canon 3C as incorporated by the Judiciary Act of 1979, and 4 F.S.M.C. 124, were intended by Congress to have different meanings here. FSM v. Skilling, 1 FSM R. 464, 471 n.2 (Kos. 1984).

One guide to the kinds of facts which could lead a disinterested reasonable observer to harbor doubts about a judge's impartiality is 4 F.S.M.C. 124(2). FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

The bar against "public comment" by a judge regarding a case in trial, contained in 4 F.S.M.C. 122 and Canon 3A(6) of the American Bar Association Code of Judicial Conduct, is not violated by a trial court judge's encouraging a representative of the national official newspaper to publish his opinion on a motion for recusal, and such encouragement does not demonstrate partiality requiring recusal. Skilling v. FSM, 2 FSM R. 209, 215 (App. 1986).

The trial judge is justified in denying a motion for recusal on the basis of failure of the moving party to file an affidavit explaining the factual basis for the motion. Skilling v. FSM, 2 FSM R. 209, 216-17 (App. 1986).

The trial court judge's act of encouraging publication of his opinion on a motion for recusal in a national official newspaper, taken together with 1) the fining of defense counsel for tardiness, 2) the length of the sentence imposed, 3) the judge's comments about community support for defendant, explaining how that factor was taken into account in sentencing, and 4) the accelerated pace of sentencing proceedings, which was not contemporaneously objected to by defense counsel, do not indicate an abuse of discretion by the judge in denying the motion for recusal. Skilling v. FSM, 2 FSM R. 209, 217 (App. 1986).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etschreit v. Santos, 5 FSM R. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etschreit v. Santos, 5 FSM R. 35, 45 (App. 1991).

Even when sufficient allegations have not been made, a judge may disqualify himself if he believes sufficient grounds exist. Jano v. King, 5 FSM R. 266, 271 (Pon. 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).

Even if neither party alleges or moves for disqualification a judge may disqualify himself if he believes sufficient grounds exist. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Before a judge disqualifies himself from a case he should also consider whether his disqualification will cause considerable delay, require substantial expense and effort, and cause undue disruption in the advancement of the matter. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Pursuant to Kosrae statute, judges of the Kosrae State Court are subject to the standards of the Code of Judicial Conduct approved by the American Bar Association. A trial judge who owns one or two shares in the plaintiff credit union must follow these standards in deciding whether to recuse himself. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 16-17 (App. 1993).

A justice who was a member of a body that negotiated the Compact and related agreements and who was the one member that signed the Compact and Extradition Agreement is not disqualified from presiding over an extradition proceeding by the circumstance of that participation on the ground that his impartiality might reasonably be questioned. In re Extradition of Jano, 6 FSM R. 93, 97-98 (App. 1993).

In order for a justice to be recused for an interest in the subject matter in controversy not only must the justice have an interest, but also it must be such that the interest could be substantially affected by the outcome of the proceeding. Nahnken of Nett v. United States (I), 6 FSM R. 318, 321 (Pon. 1994).

A litigant's unsupported allegations that the trial judge may have subconscious misgivings is speculation and is insufficient to support the judge's disqualification. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

In order for a writ of prohibition to issue to require a judge to recuse himself it must be an abuse of discretion for the judge not to recuse himself. Where it is not apparent what interest of the judge could be substantially affected by the outcome of the proceeding or that the judge is biased or prejudiced the writ will not issue. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

Normally a judge will not be disqualified when after the case has been submitted for decision a party files an unrelated lawsuit against the judge. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

A judge shall disqualify himself where he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

A judge whose governmental employment ended before the facts arose that gave rise to the case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 604 (Pon. 1996).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

The power of a justice to recuse himself must be exercised conscientiously, and should not be employed merely to accommodate or placate nervous litigants or counsel. A party's speculation about the justice's unconscious frame of mind is insufficient to create a basis for disqualification. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

A judge whose governmental employment ended before the events occurred that gave rise to the criminal case in front of him is not disqualified from the case because he did not act as an adviser to or was a material witness to the agreement at issue. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649-51 (Pon. 1996).

A trial judge's discretion is limited by the disqualification statute, 4 F.S.M.C. 124, which prescribes under what circumstances he "shall disqualify himself." Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

A judge who sat on an appellate panel that reversed a criminal conviction on the ground of ineffective assistance of counsel is not necessarily disqualified from presiding over the retrial or a later appeal. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

Merely because the trial judge was once the sole official whose responsibility it was to sign a fishing agreement that contained similar and identical terms to a later agreement at issue in a case now before him is insufficient ground to disqualify him from trying this case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

The general rule is that the disqualifying factors must be from an extrajudicial source. The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Even so, the judge may be disqualified from presiding further after a reversal if actual bias or prejudice or an appearance of partiality exists. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 7 (App. 1997).

A judge is not required to recuse himself from a retrial of convictions reversed because of ineffective assistance of counsel where one of his factual findings from the first trial relied upon an independent ground as well as arguably inadmissible evidence when the appellate court never ruled that the finding was clearly erroneous. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 8 (App. 1997).

A trial judge's view which the appellate court cannot be said to have been determined to be erroneous or based on evidence that must be rejected will not require his recusal from the retrial. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

When disqualification is not required in order to insure retrial before an impartial judge the fact that reassignment would entail minor waste and inconvenience would not change the result. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

A judge who represented a party in an earlier action involving the identical claim is required to recuse himself from the case. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

When all Chuuk State Supreme Court justices have been disqualified from presiding, an appellate panel will have to be constituted without a Chuuk State Supreme Court justice and with a temporarily-appointed justice to preside. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A justice's power to recuse himself must be exercised conscientiously, and should not be used merely to accommodate nervous litigants or counsel. Kosrae State Code, § 6.1202 establishes the standards of conduct for Kosrae state justices, which includes the Code of Judicial Conduct of the American Bar Association. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

Even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified, so long as he has not prejudged the particular case before him. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The power of a justice to recuse himself must be exercised conscientiously, and should not be used merely to accommodate nervous litigants or counsel. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

A justice is not required to recuse himself due to his former position as governor at the time that the plaintiff was moved into the teacher position in question. Tolenoa v. Kosrae, 11 FSM R. 179, 184-85 (Kos. S. Ct. Tr. 2002).

When a motion is included with an alternative motion to recuse the judge it is proper to consider the

motion to recuse first even though the motion to recuse is termed an "alternative" because, except for purely procedural or housekeeping matters, once a motion to recuse has been filed, it must be ruled on and reasons given before the judge may proceed further. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Generally, neither counsel nor a party may seek recusal of a judge by announcing that they intend to call the judge as a witness. The general rule is that since a court speaks only through its journal, a judge cannot testify about the meaning or intent of his decision in a case or explain aspects of the decision further. Nor can a judge be called to testify as to secret or unexplained reasons which led him to decide a case in a certain manner. FSM v. Wainit, 11 FSM R. 424, 429 (Chk. 2003).

Attempts to disqualify judges by indicating that the judge will be called as a witness are not favored and are rarely granted. Such an easy method of disqualifying a judge should not be encouraged or allowed. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

The prohibition against compelling a judge's testimony is reflected in a long-standing principle that a court speaks only through its orders. This ban on judges testifying has limits. Those limits are that a judge must be acting as a judge, and that it is information regarding his or her role as a judge that is sought. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

When it is the judge's actions as a judge issuing a search warrant that a party would have the judge testify about, the judge is not a potential witness concerning his issuance of a search warrant, and thus this cannot be a ground to grant the recusal motion. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

A Kosrae State Court judge's failure to disqualify himself, even though he was not asked to, does not constitute plain error requiring the appellate court to vacate and remand the matter to the Kosrae State Court when the case was not the same controversy as the case in which the judge had earlier acted as counsel because that case involved different land and different parties and its only apparent connection with this case was a will, but that will is inapplicable in this case and the prior case was dismissed on res judicata grounds without ever reaching any issues concerning the will. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

Unsolicited letters from the public, expressing their views or requests on matters pending before the court, without anything more, cannot form the basis for disqualification of the justice to whom the letter was addressed. Unsupported allegations that the presiding judge may be influenced by an unsolicited letter is speculation and is insufficient to support the judge's disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

When the trial judge is an unnamed member of a plaintiff class in another case, represented by the same counsel as the plaintiff in this case and defendant's counsel had notice of that more than one year before making a motion to recuse under 4 F.S.M.C. 124(1), and since a basis for a motion brought under section 124(1) is subject to waiver under section 4 F.S.M.C. 124(5), the basis for the judge's recusal was waived. Amayo v. MJ Co., 13 FSM R. 242, 248-49 (Pon. 2005).

Kosrae Land Court justices are required to adhere to the provisions of the Code of Judicial Conduct of the American Bar Association, which specifies that a justice is required to disqualify himself in all proceedings in which the justice's impartiality might reasonably be questioned. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

That the judge has other criminal cases pending which he has not completed, and has granted continuances in other cases are meritless grounds to recuse the judge from sentencing the defendant on his final day as a judge when those matters are unrelated to this case and trial had been completed and the only action left is the imposition of sentence. Kosrae v. Tulensru, 14 FSM R. 115, 126-27 (Kos. S. Ct. Tr. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to whom 4

F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 303, 304 n.1 (App. 2006).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice to which 4 F.S.M.C. 124 applies. Goya v. Ramp, 14 FSM R. 305, 308 n.3 (App. 2006).

Kosrae state judges are subject to the 2000 version of the American Bar Association Code of Judicial Conduct as the basis for judicial ethics and disqualification because the State Code adopted by reference and applied to Kosrae judges the 1984 edition of the ABA Code of Judicial Conduct but allowed the Kosrae Chief Justice, by rule, to make the judicial conduct requirements stricter or to establish other standards consistent with the Code of Judicial Conduct, which was done through Kosrae General Court Order 2003-02 adopting the 2000 version of the ABA Code of Judicial Conduct. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 & n.1 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

If the Kosrae Chief Justice sits on a case in the Land Court and his decision is later appealed to the Kosrae State Court, the Chief Justice must then have no involvement in the case in the Kosrae State Court and the Kosrae State Court appeal would necessarily be handled by another justice. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A motion to disqualify a judge based on the judge's health is not a motion based on any of the grounds for disqualification listed in 4 F.S.M.C. 124, the FSM disqualification statute. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

All motions to disqualify a judge under 4 F.S.M.C. 124 must be filed before the trial or hearing unless good cause is shown for filing it at a later time. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

When a judge's health issues and physical limitations have been widely known or apparent for some time, including to the movant's counsel, a motion to disqualify a judge made only after an adverse final judgment has been rendered must be denied. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A reasonable disinterested observer would require more evidence than that the judge and staff stayed at the same hotel as a defendant and his counsel and speculation concerning the defendant's activities. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The mere fact that a presiding justice happens to be a "Palau Justice," ruling on a matter in the FSM, is inconsequential, and an unsupported allegation that the jurist may not be privy to supposed peculiar nuances of FSM law, constitutes rank speculation and is insufficient to support the justice's disqualification. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

When the movants have not shown a factual basis for an appearance of impropriety, in terms of the judge overseeing two separate cases involving the same party or shown a lack of competency to rule on FSM matters and as a result, the motion to disqualify the judge will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Disqualification of a Supreme Court trial division justice is governed by 4 F.S.M.C. 124, which in § 124(1) requires disqualification if the justice's impartiality could reasonably be questioned, and in § 124(2) requires a justice's disqualification if the justice concludes that he falls within the statutory provisions, and in

§ 124(2)(a) requires disqualification when the justice has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

In order for the Supreme Court to issue an extraordinary writ of prohibition overruling a trial judge's denial of a motion to disqualify, the trial judge's ruling must be an abuse of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248, 250 (App. 2015).

When a party moves to disqualify a trial judge, the party is attacking that judge's perceived bias or conflict of interest. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner seeking a writ of prohibition to disqualify a trial judge must show an abuse of discretion, as the appellate court will not merely substitute its judgment for that of the trial judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A petition for a writ of prohibition to disqualify a trial judge will be denied when it neither meets the burden of showing that the judge harbors bias or prejudice nor shows that any disqualifying knowledge was derived from an extrajudicial source since the mere fact that the judge made an adverse evidentiary ruling and declared a mistrial does not mean the judge's impartiality might reasonably be questioned. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

A defendant whose trial ended in a mistrial is entitled to a new trial, but not a new judge. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

In an issue of first impression, U.S. court decisions about judicial disqualification can be used for guidance. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Under 4 F.S.M.C. 124(1), a Supreme Court justice must disqualify himself in any proceeding where his impartiality might reasonably be questioned. The standard for disqualification is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

– Recusal – Bias or Partiality

Determination of a judge's bias, prejudice or partiality should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Jonas (II), 1 FSM R. 306, 317-18 (Pon. 1983).

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM R. 339, 362 (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).

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

Questioning a judge's impartiality, under 4 F.S.M.C. 124(1), brings into issue possible favoritism, bias or some other interest of the judge for or against a party. This affords no basis, however, for disqualifying a judge because of his general attitudes, beliefs, or philosophy, even where it is apparent that those do not augur well for a particular litigant. FSM v. Skilling, 1 FSM R. 464, 472-73 (Kos. 1984).

In order that a judge's impartiality might reasonably be questioned there must be facts or reasons which furnish a rational basis for doubting the judge's impartiality. Reasonableness is to be considered from the perspective of a disinterested reasonable person. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

The test for determining if a judge's impartiality in a proceeding might reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 475 (Kos. 1984).

4 F.S.M.C. 124(2) prescribes a subjective test under which a judge must disqualify himself if he subjectively concludes that he falls within the statutory provisions. Section 124(1), on the other hand provides an objective standard designed to guard against the appearance of impartiality. FSM v. Skilling, 1 FSM R. 464, 476 (Kos. 1984).

4 F.S.M.C. 124(1) was designed to cover contingencies not foreseen by the draftsmen who set out specific grounds for disqualification in section 124(2). Despite its "catch all" nature, however, it remains necessary to show a factual basis, not just wide-ranging speculation or conclusions, for questioning a judge's impartiality. FSM v. Skilling, 1 FSM R. 464, 476-77 (Kos. 1984).

Courts normally adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

Where a trial justice is asked to recuse himself rather than continue to sit on remaining counts after receiving testimony concerning stricken counts, the issue presented is whether there exists either actual bias, or prejudice, or appearance of partiality. Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

To apply a standard of judicial ethics established by statute in 1982 to prevent a judge in 1989 from presiding over a case because his conduct prior to 1982 suggests that he now may be biased against the party seeking recusal would be inappropriate, in the nature of an ex post facto violation, and would be contrary to "the policy favoring prospective application of court decisions [which] also applies to statutes." Adams v. Etscheit, 4 FSM R. 237, 240 (Pon. S. Ct. Tr. 1989).

Recusal of a trial judge from presiding over a criminal trial, because he has presided over a failed effort to end the case through a guilty plea, is not automatic, since bias, to be disqualifying, generally must stem from an extrajudicial source. In re Main, 4 FSM R. 255, 260 (App. 1990).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. A reasonable disinterested observer would require more evidence than that one of the parties was seen at hotel where the judge had checked in. Jano v. King, 5 FSM R. 266, 270 (Pon. 1992).

In order for a judge's personal bias or prejudice to be disqualifying it must stem from an extrajudicial source or conduct, not from information learned or events occurring during the course of a trial. Youngstrom v. Youngstrom, 5 FSM R. 385, 387 (Pon. 1992).

Even where the circumstance does not give rise to a reasonable person questioning the justice's impartiality, if there is evidence of actual partiality disqualification would follow. In re Extradition of Jano, 6 FSM R. 93, 98 (App. 1993).

Where trial justice resides in housing rented by the national government and assigned to the trial justice as a statutory part of his compensation and the party before the court only seeks a monetary award for the alleged loss of the land upon which the trial justice resides the trial justice has no interest which might be substantially affected by any of the relief requested. It is therefore not an abuse of the trial justice's discretion to deny a motion to recuse for interest or bias. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

For the questioning of a judge's impartiality to be reasonable it must be grounded upon facts or reasons which furnish a rational basis for doubting the judge's impartiality, and such reasonableness is not to be considered from the perspective of the litigant or of the judge, but of the disinterested reasonable observer. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

A judge's impartiality cannot reasonably be questioned when the judge had been chairman of an agency while it concluded an agreement with a party to a case now before him where only a later agreement is at issue and he had no part in negotiating the first agreement. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Because a judicial official is presumed to be unbiased, a judge will not be required to recuse himself where the party seeking his recusal relies on presumptions and has not established a sufficient factual

basis. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6 (App. 1997).

A charge of appearance of partiality must first have a factual basis. Recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The trial judge has a range of discretion in making this determination. But a trial judge is not to use the standard of mere suspicion. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 6-7 (App. 1997).

There may be times when each of the grounds raised are insufficient to reasonably question the trial judge's impartiality, but the combination of all would cause a reasonable, disinterested person to harbor doubts about the judge's impartiality. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 10 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Hartman v. Bank of Guam, 10 FSM R. 89, 96 (App. 2001).

It is not unusual for the same judge to hear interrelated matters involving one or more parties in common, and the fact that the same judge hears different cases involving the same party or parties and related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). Hartman v. Bank of Guam, 10 FSM R. 89, 97 & n.5 (App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of forum shopping. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned. Kosrae v. Sigrah, 10 FSM R. 654, 658 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Kosrae v. Sigrah, 10 FSM R. 654, 658-59 (Kos. S. Ct. Tr. 2002).

A party is entitled to an unbiased judge, not to a judge of their choosing. A party is not permitted to use a motion to disqualify a judge as a means of judge shopping. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 135-36 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires that a judge disqualify himself in a proceeding in which the judge's impartiality must reasonably be questioned. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

Even when a judge has had prior opinions regarding a legal issue, this alone does not disqualify a

judge, and even if a judge has commented on certain issues of law when he was a government employee, the judge is not disqualified so long as he has not prejudged the particular case before him. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

In the absence of a showing of any actual partiality or extrajudicial bias, a judge properly meets his obligation to hear the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 11 FSM R. 424, 430 (Chk. 2003).

Ex parte applications are allowed (and are usual) for warrant applications or motions to file under seal. No inference of a judge's partiality may be drawn from them. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial, that is, resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

When the communications in question were not extrajudicial, the court's impartiality cannot be reasonably questioned because the government made *ex parte* applications it is allowed to make under the applicable law. This therefore cannot be a ground for recusal. FSM v. Wainit, 11 FSM R. 424, 431-32 (Chk. 2003).

A charge of appearance of partiality must first have a factual basis and recusal is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. While the trial judge has a range of discretion in making this determination, he cannot use a standard of mere suspicion. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

When a party has not shown a factual basis to reasonably question the judge's impartiality, but only raised a mere suspicion, and when he has not shown a factual basis for a claim of bias or prejudice; and when he cannot call the current judge as a witness to testify about his judicial acts; and when even the combination of these would not cause a reasonable, disinterested person to harbor doubts about the judge's impartiality, the court can find no basis upon which to grant the motion to recuse. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The fact that the same judge hears different cases involving the same party or parties or related issues does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

The standard to be applied when a judge's recusal is sought on the ground a judge's impartiality might reasonably be questioned is whether a disinterested reasonable observer who knows all the circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Litigants are not entitled to a judge of their own choosing; they are only entitled to an unbiased judge. FSM v. Kansou, 12 FSM R. 637, 640 (Chk. 2004).

A charge of appearance of partiality must first have a factual basis. The standard to be applied is

whether an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. The standard of "mere suspicion" is inadequate to support disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

The applicable statute requires that a Supreme Court justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

Disqualification of a Land Court Justice is required when the justice's impartiality might reasonably be questioned. One specific basis for disqualification is where the justice has a personal bias or prejudice concerning a party, or has personal knowledge of disputed evidentiary facts concerning the proceeding. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

The test for determining if a judge's impartiality in a proceeding might by reasonably be questioned is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about the judge's impartiality. There may be a time when each of the actions is insufficient to reasonably question the judge's impartiality, but the combination of all would cause a reasonable disinterested person to harbor doubts about the judge's impartiality. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The test for determining whether a justice's impartiality in a proceeding might reasonably be questioned is whether a reasonable disinterested person, who knows all the circumstances, would have doubts about the justice's impartiality, and the general rule is that the disqualifying factors must be from an extrajudicial source. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When a justice excluded counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client, her exclusion from that conference is inadequate to, and cannot, show personal bias by that justice toward counsel since, typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and that counsel was not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted. A petition for writ of prohibition will therefore be denied. Goya v. Ramp, 14 FSM R. 303, 304-05 (App. 2006).

An "incident" involving a justice's exclusion of counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client is inadequate to, and cannot, show personal bias toward counsel by that justice because typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and since counsel is not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted, her exclusion from that chambers conference is not a ground to disqualify the justice. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify

himself. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584 (App. 2007).

While a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 584-85 (App. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

When there is simply no evidence – beyond mere speculation – that a justice might harbor some element of partiality towards the appellant or his counsel, as such, and without any evidence beyond mere speculation as to my purported partiality, the justice must deny the appellant's request under 4 F.S.M.C. 124(1) to disqualify himself from participating in the matter, but recusal may be granted on other grounds. Damarlane v. Pohnpei Legislature, 14 FSM R. 582, 585 (App. 2007).

A Supreme Court Justice must disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Berman v. Rosario, 15 FSM R. 337, 340, 341 (Pon. 2007).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

The type of partiality at which 4 F.S.M.C. 124(1) is aimed is extrajudicial bias, or bias resulting from information received by the judge outside of the judicial proceeding or proceedings in which the judge has participated. A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself. On the other hand, while a trial judge has a range of discretion in making his determination about whether he will disqualify himself, he cannot use a standard of mere suspicion. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A charge of appearance of partiality must first have a factual basis. Disqualification is then appropriate only if a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. The facts must provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A party requesting disqualification must establish that actual bias or prejudice exists that comes from an extrajudicial source. A litigant's unsupported allegations that the trial judge may have subconscious misgivings is purely speculation, and is insufficient to support the judge's disqualification. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

A determination of a judge's bias should be made on the basis of conduct or information which is extrajudicial in nature. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since it is in the very nature of our system of justice that judges must rule in favor of one party and against another, a judge does not engage in extrajudicial behavior merely by ruling in favor of one party and against another. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

The thesis that an adverse ruling from the bench can constitute extrajudicial behavior that warrants disqualification must be rejected. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for

disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

The fact that the same judge hears different cases involving the same party or parties or related issues, does not automatically result in an appearance of partiality under 4 F.S.M.C. 124(1). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 229 (Chk. 2015).

Information that a judge learned or events that occurred during the course of a judicial proceeding cannot disqualify the judge on the grounds that the events or information now cause him to be biased or prejudiced or create an appearance of impropriety. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

In determining whether a judge's impartiality might reasonably be questioned, the test is whether a disinterested reasonable person who knows all the circumstances would harbor doubts about the judge's impartiality. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

Factors disqualifying a justice for bias or prejudice generally must be established as coming from an extrajudicial source. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

Judicial officers are presumed to be unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

– Recusal – Close Relationship

Canon 3E(1) of the Code of Judicial Conduct, as adopted by Kosrae State Code, section 6.201, requires that a justice be disqualified in certain cases, including those cases where the judge is within the third degree relationship to one of the parties. The term "third degree relationship" is defined in the Code of Judicial Conduct and does not include cousin. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

Disqualification under the Code of Judicial Conduct based upon the justice's family relationship to a party is not mandatory when the party is a cousin because the third degree relationship does not include cousin. So when there are no specific allegations of the justice's partiality and the justice has no personal interest in the outcome, a motion to recuse in a matter involving a cousin may be denied. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 92 (Kos. S. Ct. Tr. 1999).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is to the justice's knowledge likely to be a material witness in the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

When the justice's brother has been named as a witness for trial the justice, pursuant to Canon 3.E(l)(d)(iv), is now disqualified from the proceeding. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned where he or his spouse, or a person within a close relationship to either of them, or the spouse of such person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652 (Chk. S. Ct. Tr. 2002).

The ABA Code of Judicial Conduct provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including when the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is a party to the proceeding. Kristoph v. Emin, 10 FSM R. 650, 652-53 (Chk. S. Ct. Tr. 2002).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Kristoph v. Emin, 10 FSM R. 650, 653 (Chk. S. Ct. Tr. 2002).

When counsel's affidavit in support of a recusal motion fails to demonstrate in any way how he has personal knowledge of the relationships contained in his affidavit, rather than knowledge based upon statements made to him by others, his affidavit is deficient, and must be disregarded. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

When it is impossible to determine from an affidavit whether the degree of relationship is within the third degree of consanguinity, a motion to disqualify will be denied because failure to establish the degree of relationship by admissible evidence is fatal to a motion to disqualify. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

A justice is required to disqualify himself in a proceeding in which a person within the third degree of relationship to the justice is, to the justice's knowledge, likely to be a material witness in the proceeding, but when the justice's brother was never a witness in the case, was not named as a witness by either party, and did not testify at the trial, he was not a person likely to be a material witness in the proceeding and the justice's disqualification was not required on this basis. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a judge's disqualification when the judge or judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, or an officer, director or trustee of a party. But the phrase "director of a party" in the Code of Judicial Conduct is limited to corporations and business entities, and does not include directors in state government. Tolenoa v. Kosrae, 11 FSM R. 179, 183-84 (Kos. S. Ct. Tr. 2002).

A Supreme Court justice must disqualify himself when a person within a close relationship to him is a director of a party and also in any proceeding in which his impartiality might reasonably be questioned. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 182-83 (Pon. 2003).

The recusal statute provides that a justice shall disqualify himself if a closely related person is a director of a party, not has been or was at some point in the past. Therefore when the judge's brother's board membership and the judge's assignment to the case was never concurrent, there was not a time when 4 F.S.M.C. 124(2)(e)(i) was applicable, especially when the judge was not aware that his brother had been a

member of party's board until so notified by the party's advice to the court. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

When it has now been just over three and a half years since the judge's brother was last a party's board member, and more than six and a half years since he first became one, and when the judge was not aware that his brother had been a board member until so advised by the party, the judge's thinking in the course of the case could not have been influenced by a fact of which he was not aware, and the court cannot conclude that a disinterested reasonable observer who knows all of these circumstances would question the judge's impartiality. Adams v. Island Homes Constr., Inc., 12 FSM R. 181, 183 (Pon. 2003).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

When the judge disqualified himself in another case because of his mistaken belief at the time that his relative was a party's step-mother; when, although the plaintiff in a second matter moved to disqualify the judge from presiding over that matter, he did not disqualify himself and would not have disqualified himself if he had ruled on the motion, but ultimately reassigned that case for administrative reasons; and when the judge had no relationship of any type with the parties in either case and thus there was no reasonable basis for anyone to question his impartiality in presiding over the case at bar, in which counsel in the other two cases is plaintiff; and when there is no evidence, beyond mere speculation, that the judge might harbor some element of impartiality towards the plaintiff, the judge will deny a request that he disqualify himself. Berman v. Rosario, 15 FSM R. 337, 341-42 (Pon. 2007).

A Chuuk State Supreme Court trial justice must be disqualified when the justice's impartiality might reasonably be questioned including when he or his spouse, or a person within a close relationship to either of them, or the spouse of such person, is a party to the proceeding. A close relationship means a person within the third degree of relationship. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

In order to obtain a justice's disqualification based upon Chk. S.L. No. 190-08, section 22(2)(d)(i), the moving party must establish by admissible evidence that the alleged relationship is within the third degree of relationship. It is not sufficient for disqualification that a party show that a justice is related to a party or a party's spouse solely by virtue of their membership in the same clan. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

A judge is disqualified to sit on a lawsuit when a party's counsel is the judge's sister-in-law. Loyola ex rel. Edmund v. Hairns, 19 FSM R. 603, 606 (App. 2014).

The Code of Judicial Conduct requires that a justice be disqualified when the judge is within the third degree relationship to one of the parties. The term third degree relationship as defined in the Code does not include cousin. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

There are various degrees of familial relationships and not every family relationship requires disqualification. The FSM Judiciary Act of 1979 requires disqualification of a justice on the basis of "close relationship," not just any relationship, to a person involved in litigation. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 495 (Pon. 2016).

When the familial relationship relied upon by the movant is too remote to cause any conflict of interest, the motion to recuse will be denied. Pohnpei Transfer & Storage, Inc. v. Shoniber, 20 FSM R. 492, 496 (Pon. 2016).

When counsel is the judge's wife's sister, it creates a non-waivable conflict of interest requiring the judge's recusal. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

Recusal is not required when counsel was the judge's former Pohnpei Supreme Court law clerk but the judge has had no relationship with him since his law clerk employment ended several years ago and has never worked on this particular matter with him because there is no actual or potential conflict of interest, notwithstanding that the State also waived any potential conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 549 (Pon. 2016).

– Recusal – Extrajudicial Knowledge

A judge who, at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence in the case is under an ethical obligation to disqualify himself or herself from the litigation. FSM v. Jonas (II), 1 FSM R. 306, 320 n.1 (Pon. 1983).

The normal situation in which recusal may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. In re Main, 4 FSM R. 255, 260 (App. 1990).

The term "disputed evidentiary facts concerning the proceeding" does not apply to disputed legal issues in the case. Even where a judge may have had prior opinions regarding a legal issue, this alone does not disqualify a judge. Kosrae v. Sigrah, 10 FSM R. 654, 657 (Kos. S. Ct. Tr. 2002).

A judge's participation in a constitutional convention does not require his recusal for having personal knowledge of disputed evidentiary facts concerning a provision adopted in that convention because any knowledge gained during the convention is not a disputed evidentiary fact. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

When the justice does not have personal knowledge of disputed evidentiary facts concerning the proceeding; when he has not prejudged any legal issues in this case; and when a disinterested reasonable observer, knowing all the facts and circumstances, would not have doubts regarding his impartiality in this case based upon his participation as a Constitutional Convention delegate nearly twenty years ago, the justice's disqualification is not required under the Code of Judicial Conduct. Kosrae v. Sigrah, 10 FSM R. 654, 659 (Kos. S. Ct. Tr. 2002).

The Code of Judicial Conduct requires a justice to disqualify himself in a proceeding where the judge has personal bias or knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. The term does not apply to the legal issues presented in the case. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 136 (Kos. S. Ct. Tr. 2002).

When a justice does not have personal knowledge of disputed evidentiary facts concerning a case involving the interpretation of constitutional provisions because any knowledge gained during a constitutional convention is not personal knowledge of disputed evidentiary facts concerning the case, and when the justice has not prejudged any legal issues in the case, a disinterested reasonable observer, knowing all the facts and circumstances, would not have doubts regarding the justice's impartiality in the case, based upon his participation as a constitutional convention delegate. The justice's disqualification is therefore not required. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 133, 137 (Kos. S. Ct. Tr. 2002).

There is no need to remand a matter for a new trial judge to consider the summary judgment motions when the knowledge that the defendants lived on part of the land was in the record and did not stem from an extrajudicial source; when there was no extrajudicial conduct because the trial judge received information from the former special master when both counsel were present; when trial counsel as well as the judge engaged in appeals to divine aid at the motion hearing; and when the judge encouraged settlement.

Bualuay v. Rano, 11 FSM R. 139, 148-49 (App. 2002).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also be used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Disqualification of a the justice is required when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. The term "disputed evidentiary facts concerning the proceeding" has been interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Since at trial, the defendant may defend the malicious mischief charge through disputing the elements of the offense, including the alleged damage to the glass at the school, and since the presiding justice's hearing glass being broken on the subject night at the school may be considered circumstantial evidence of defendant's conduct, the presiding justice's hearing glass being broken on the subject night at the school may be facts involved in the defendant's actions or conduct in this case and therefore disputed evidentiary facts concerning the proceeding. Accordingly, the trial justice recused himself. Kosrae v. Langu, 13 FSM R. 269, 272-73 (Kos. S. Ct. Tr. 2005).

Disqualifying factors must be from an extrajudicial source. When the only example a party gives of the court's supposed "extrajudicial knowledge" is the court's statement of its intention when it issued the search warrant that lead to the events in the case, it is a novel interpretation of the word "extrajudicial." Knowledge gained through the application for and issuance of a search warrant, by its nature, cannot be deemed extrajudicial knowledge. FSM v. Wainit, 13 FSM R. 293, 294-95 (Chk. 2005).

A judge's disqualification must be made on the basis of conduct which is extrajudicial in nature that is, on some basis other than what the judge learned from his participation in the case. Information learned, or events occurring during the course of a judicial proceeding cannot be used to recuse a judge on the grounds that the events or this information has now caused him to be biased or prejudiced or that it creates an appearance of impropriety. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A justice, who at the beginning of a trial, is so influenced by other information that he knows he will not be capable of basing his decision solely on the properly admitted evidence is under an ethical obligation to disqualify himself from the proceedings. Edmond v. Alik, 13 FSM R. 413, 416-17 (Kos. S. Ct. Tr. 2005).

The normal situation in which recusal may be required is when a justice's extrajudicial knowledge, relationship or dealing with a party might be such as to cause a reasonable person to question whether the justice could preside over and decide a particular case impartially. Isaac v. Saimon, 14 FSM R. 33, 35-36 (Kos. S. Ct. Tr. 2006).

A justice must disqualify himself where he has served in governmental employment and in such capacity expressed an opinion concerning the merits of the particular case in controversy. The presiding Land Court justice's former position as Land Commissioner and his attendant statutory duties to review, approve and affirm adjudications for determination of ownership of land, including boundary determinations, serve as grounds for disqualification, based upon extrajudicial knowledge. When the presiding justice served in governmental employment as a Kosrae State Land Commissioner and affirmed the land registration team adjudication and determination of the parcel's boundaries, the presiding justice (as a Land Commissioner) did express an opinion concerning the merits of the parties' boundary claims. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

Disqualification is required where the justice has "personal knowledge of disputed evidentiary facts concerning the proceeding." The term "disputed evidentiary facts concerning the proceeding" has been

interpreted to mean facts involved in the actions or conduct of persons in a case. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice did not hear or observe any of the defendant's alleged actions, either concerning the charged offenses, or relating to the alleged crash into the electric pole causing an island-wide power outage; when he did not mention the defendant's identity or name; and when he did not make any statement which suggested bias or prejudice against the defendant, but did reference the island-wide power outage, which the justice and all persons with electrical service on the island suffered and which is unrelated to the offenses that the defendant has been charged with, the exposure to an power outage, without more, cannot form the basis for the justice's disqualification and the justice's disqualification is not required. Kosrae v. Nena, 14 FSM R. 70, 72 (Kos. S. Ct. Tr. 2006).

A justice is barred from sitting on a case where he has personal knowledge of disputed evidentiary facts, but knowledge that does not stem from an extrajudicial source is not disqualifying. Ruben v. Petewon, 14 FSM R. 141, 145-46 (Chk. S. Ct. App. 2006).

The 2000 ABA Code of Judicial Conduct, Canon 3.E requires a judge's disqualification in a proceeding where the judge's impartiality might reasonably be questioned, and one specific basis for disqualification is when the justice has personal knowledge of disputed evidentiary facts concerning the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

The general rule is that the disqualifying factors must be from an extrajudicial source, and the normal situation in which a judge's disqualification may be required is when a judge's extrajudicial knowledge, relationship or dealings with a party, or the judge's own personal or financial interests, might be such as to cause a reasonable person to question whether the judge could preside over and decide a particular case impartially. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

The general rule is that the jurist's knowledge of disqualifying facts must have originated from an extrajudicial source. A disqualification must be made on the basis of conduct which is extrajudicial in nature, that is, on some basis other than what the judge learned from his participation in the case. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

It has long been regarded as normal and proper for a judge to sit in the same case upon its remand. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

– Recusal – Financial Interest

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

Where the trial justice resides in housing provided for him by the national government by statute and is not an intended third-party beneficiary to the government's lease of the land and the action is only for money damages concerning the land the trial justice has no financial or other interest in the matter that may serve to disqualify the justice. Nahnken of Nett v. United States (I), 6 FSM R. 318, 322 (Pon. 1994).

Since debt securities do not give rise to a financial interest in the debtor which issued the securities, a judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which a bank is a party. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Debt interests are not considered to give rise to a financial interest in the debtor that issued the security because the debt obligation does not convey ownership interest in the issuer. Therefore, disqualification is not required solely because a party in a matter before the judge is a corporation or governmental entity that has issued a debt security owned by the judge. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

Common sense compels the conclusion that a debt obligation to a bank is not a disqualifying interest since a routine debt like a mortgage, fully secured by real property of an appraised value in excess of the debt, cannot be affected by the outcome of litigation involving the bank that is a mortgagee because a loss for the bank, even if ruinous, would not extinguish or reduce the obligation of the mortgagor to repay, or undermine the value of the property securing the loan, or, similarly, a bank victory, regardless of how substantial, affords not possible benefit to the mortgagor. In re Estate of Setik, 20 FSM R. 604, 607 (Chk. S. Ct. Tr. 2016).

When the presiding judge has a personal bank loan and he is not in default, there is no reason to think that his decision in the case will in any way influence his loan with the bank, either way he decides, since his loan is no different than other loans given to people that are not judges. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A justice with an outstanding bank loan can also decide for himself whether to recuse himself if the issue of impartiality arises. In re Estate of Setik, 20 FSM R. 604, 608 (Chk. S. Ct. Tr. 2016).

A typical situation where recusal may be required is when a sitting judge's extrajudicial knowledge, relationship, or dealings with a party or the judge's own personal or financial interests might be such as to cause a reasonable person to question whether the judge could impartially preside over and decide a particular case. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Unless unusual circumstances exist, a judge is not obligated to disqualify himself or herself because the judge has a loan from a financial institution that is a litigant before the judge. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 45 (App. 2016).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

If it is acceptable for a judge to accept an ordinary loan from a financial institution, the same should not serve as grounds for disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Accepting a loan from a lending institution in its regular course of business on the same terms available to the general public, is fully consistent with a judge's obligation to conduct personal activities so as to minimize the risk of conflicts that would result in frequent disqualifications. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

When unusual circumstances exist, questions about impartiality may arise. For example, if a judge were presently appealing to the bank for a loan or an extension for or restructuring of a loan, or if the loan is currently in default and is presently or soon will be litigated, there would exist a real question about the appearance of impropriety. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 49 (App. 2016).

The mere fact of a relationship between a judge and a financial institution as borrower/lender or mortgagor/mortgagee does not give rise to an inference that the judge's impartiality might reasonably be questioned. Something more than an ordinary financial transaction between the judge and financial institution must be present for disqualification to be necessary as when the financial relationship affords the judge services and benefits not generally available to the public. Christopher Corp. v. FSM Dev. Bank, 21

FSM R. 42, 49 (App. 2016).

When a consumer loan was issued to the judge well before he was appointed to the appellate panel; when the bank does not aver any special circumstances necessitating the judge's disqualification since the loan was issued on standard terms available to the general public and were negotiated before his designation to the panel; and when the loan is current and not in default or delinquent nor at risk thereof, and is not currently being negotiated for extension, restructuring, or refinancing, the bank has not overcome the presumption that a judicial official is unbiased. Without more, a judge's consumer loan and the mere relationship between the bank and the judge as creditor-debtor, is insufficient to require the judge's disqualification. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 50 (App. 2016).

– Recusal – Judge's Duty

A judge has a duty to disqualify himself from presiding in a proceeding in which he entertains a bias or prejudice against a party. Andohn v. FSM, 1 FSM R. 433, 444 (App. 1984).

A justice's power to recuse himself must be exercised conscientiously and not be used to avoid difficult or controversial cases nor merely to accommodate nervous litigants or counsel. FSM v. Skilling, 1 FSM R. 464, 471 (Kos. 1984).

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).

A justice's obligation to recuse himself is not dependent on the existence of a party's motion to disqualify him. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

In the usual case, a Chuuk State Supreme Court justice's temporary unavailability would not be grounds to consider him disqualified and unable to perform his professional and constitutional duty to preside on an appellate panel. But he is disqualified when the court is required by statute to decide the case by a certain date in the near future and the court would be unable to meet its statutory obligation if it had to await the justice's return. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 98 (App. 2001).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

It is a judge's duty not to disqualify himself unless he believes that there are proper and reasonable grounds therefor. The grounds for disqualification of a Kosrae state justice are provided in the Model Code of Judicial Conduct. Kosrae v. Nena, 14 FSM R. 70, 71 (Kos. S. Ct. Tr. 2006).

When the justice sentencing the defendant has resigned from the court and it is the justice's final day of service as a justice, a motion for recusal from sentencing on that ground is meritless. It is within the judge's authority and is his duty to conduct the sentencing hearing especially since the sentencing hearing was delayed at the defendant's request to address the issue of admission of defendant's prior criminal record. Kosrae v. Tulensru, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

The duty to recuse may arise even in the absence of a motion to disqualify. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In the absence of a showing of any actual partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge properly meets his obligation to hear the case. Berman v. Rosario, 15 FSM R. 337, 341 (Pon. 2007).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

In the absence of a showing of any partiality or extrajudicial bias under 4 F.S.M.C. 124(1), a judge is obligated to hear cases assigned to that judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

– Recusal – Judicial Statements or Rulings

The fact that answers given by the victim-witness in response to questions posed by the judge happened to strengthen the government's case did not, by itself, indicate that the judge was impermissibly helping the prosecution, or that he was biased against the defendant. Andohn v. FSM, 1 FSM R. 433, 446 (App. 1984).

4 F.S.M.C. 124 furnishes no grounds for disqualifying a judge on the basis of statements or rulings made by him in his judicial capacity which reflect reasoned views derived from documents submitted, arguments heard, or testimony received in the course of judicial proceedings in the same case. FSM v. Skilling, 1 FSM R. 464, 473 (Kos. 1984).

A judge's adverse rulings in a case do not create grounds for disqualification from that case. FSM v. Skilling, 1 FSM R. 464, 484 (Kos. 1984).

A motion for disqualification ordinarily may not be predicated on the judge's rulings in the case or in related cases, nor on a demonstrated tendency to rule in a particular way, nor on a particular judicial leaning or attitude derived from his experience on the bench. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). There is a presumption that judicial officials are unbiased, and the burden of proof is on the party asserting an unconstitutional bias to demonstrate otherwise. A party requesting recusal on retrial must establish that actual bias or prejudice exists that comes from an extrajudicial source. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 649 (Pon. 1996).

Claims that a trial justice has shown disfavor toward intervenors' counsel, or bias in rulings in the instant case or other cases can be dismissed as failing to provide valid grounds for disqualification. Kristoph v. Emin, 10 FSM R. 650, 654 (Chk. S. Ct. Tr. 2002).

Adverse rulings by a judge in a case do not create grounds for disqualification in that case. To be disqualifying, any alleged judicial bias and prejudice must be based upon an extrajudicial source. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

When the court did not *sua sponte* raise the issue of the search warrant's validity and only proceeded to that question after defense counsel had insisted on entering that area and the government had orally waived its right to oppose the motion in writing and when there was no proper challenge to, and the court has made no ruling on, the arrest warrant's validity, the court will not grant a recusal motion because the court's oral or written rulings on a search warrant's validity or its issuance of an arrest warrant cannot be basis upon which its impartiality may be reasonably questioned and recusal granted. FSM v. Wainit, 11 FSM R. 424, 430-31 (Chk. 2003).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1) (appearance of partiality) and even a judge's adverse rulings made

in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 11 FSM R. 424, 431 (Chk. 2003).

A judge must disqualify himself from a proceeding in which the judge's impartiality might reasonably be questioned, and in specific instances. The disqualifying factors must be from an extrajudicial source. Statements and rulings made by a judge in the course of judicial proceedings do not provide grounds for disqualification. Adverse rulings in a case are not grounds for disqualification of the presiding justice. The slow progress of the case is not based upon an extrajudicial source and therefore is not a basis for disqualification. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

A judge's statements and rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Even a judge's adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

A judge's adverse rulings made in the course of judicial proceedings do not provide grounds for recusal. Nor may a recusal be based on the judge's rulings in a related case. Thus, whether a refiled case is considered the same case as the earlier (dismissed) case or a related case, the court's prior rulings are not a ground for recusal. FSM v. Wainit, 13 FSM R. 293, 295 (Chk. 2005).

Courts adhere to the rule that any alleged judicial bias and prejudice, to be disqualifying, must stem from an extrajudicial source, and that a judge's adverse rulings in a case do not create grounds for disqualification from that case. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Rulings made by a judge in the course of prior proceedings do not provide grounds for disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Adverse rulings made in the course of judicial proceedings do not provide grounds for disqualification under 4 F.S.M.C. 124(1). Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

Under controlling FSM case law, the disqualifying factors must stem from an extrajudicial source. Unfavorable or adverse rulings in a case, are not an extrajudicial source and are not a ground to reasonably question the judge's impartiality in that case. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569-70 (Pon. 2016).

When none of the rulings about which the movants complain were based on or were the result of any extrajudicial source, knowledge, or factor, they cannot be a ground for disqualification. Litigation (and thus impartial judging) by its very nature, invites judicial rulings unfavorable to one party, or another, or both since it is in the very nature of our system of justice that judges must rule in favor of one party and against another. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

A judge's unfavorable rulings are not grounds for disqualification even if those rulings are believed to be erroneous, since the appellate division may later correct a judge's erroneous ruling. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 (Pon. 2016).

Generally, a judge's adverse rulings in the course of judicial proceedings do not provide grounds to disqualify a judge. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

– Recusal – Procedure

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM R. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM R. 209, 214 (App. 1986).

A party's motion to have a trial justice recuse himself is insufficient if not supported by affidavit as required by 4 F.S.M.C. 124(c). Jonas v. FSM, 2 FSM R. 238, 239 (App. 1986).

The fact that the Pohnpei Judiciary Act, 2L-160-82, §§ 30(1), (2), requires a judge to rule on a motion for recusal reveals that disqualification is not mandated but instead is at the discretion of the judge. Adams v. Etscheit, 4 FSM R. 226, 230-31 (Pon. S. Ct. Tr. 1989).

Disqualification of a judge under the Pohnpei Judiciary Act, 2L-160-82, minimally requires: 1) a written motion for disqualification filed before the trial or hearing unless good cause is shown otherwise; 2) a good faith affidavit showing factual grounds; and 3) grounds which originated after January 20, 1984 when the Act became effective, whereupon impartiality is to be assessed on the basis of whether a disinterested reasonable Pohnpeian who knows all the circumstances would harbor doubt about the judge's impartiality. Adams v. Etscheit, 4 FSM R. 226, 231-32 (Pon. S. Ct. Tr. 1989).

A motion requesting a trial court to reconsider its earlier ruling denying a motion for recusal may be denied where a party making the motion has been aware of the document upon which the motion is based for almost 10 years; where counsel who prepared the motion had done so without previously appearing before the trial judge to "assess the temper of that judge;" where the trial judge had studied the entire case "quite extensively" before the motion had been filed; and where there are "strong indications" that counsel is "judge-shopping," so that counsel's conduct "represents an example of a very serious and contemptuous misconduct" toward the court. Adams v. Etscheit, 4 FSM R. 237, 238-40 (Pon. S. Ct. Tr. 1989).

Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. Motions for recusal must be supported by affidavit stating the grounds for recusal. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal. Jano v. King, 5 FSM R. 266, 268 (Pon. 1992).

The court is required by statute to rule on a motion to disqualify the sitting justice before proceeding further on the matter. Nahnken of Nett v. United States (I), 6 FSM R. 318, 320 n.1 (Pon. 1994).

In order to overturn the trial judge's denial of a motion to recuse an appellant must show an abuse of the trial judge's discretion. The same standard of review applies to a petition for a writ of prohibition ordering a judge to recuse himself. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

A person who is not a party cannot move for the disqualification of the trial judge because persons who are not parties of record to a suit have no standing which will enable them to take part in or control the proceedings. Shiro v. Pios, 6 FSM R. 541, 543 (Chk. S. Ct. App. 1994).

The proper method to obtain a writ of prohibition to disqualify a member of an appellate panel is to move for disqualification before that member, and, if the recusal motion is denied, to file a petition for a writ of prohibition as a separate matter to be considered by an appellate panel constituted pursuant to Appellate Rule 21(a). Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

In considering motions for recusal a court must carefully analyze the grounds in terms of the disqualification statute, and it need not lightly grant such motions simply to accommodate or placate litigants or their counsel, lest the judge be violating his judicial oath to administer justice. Damarlane v. United States, 7 FSM R. 52, 54 (Pon. S. Ct. App. 1995).

Under the Pohnpei statute a party moving for disqualification of a judge must do so before the trial or hearings unless good cause is shown for filing it at a later time. Upon receipt of such a motion, the judge

shall rule on it before proceeding further in the matter, stating his reasons for granting or denying it on the record. Damarlane v. United States, 7 FSM R. 52, 55 (Pon. S. Ct. App. 1995).

The Chuuk Judiciary Act requires that a motion for a justice's disqualification be supported by affidavits to establish a factual basis for the motion, and that there be a hearing at which the movant must prove his allegations. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

Allegations that are the basis for a motion for a justice's disqualification must be proven by admissible and competent evidence. Inadmissible affidavits are not enough. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

The standard to be applied in reviewing a request for disqualification under 4 F.S.M.C. 124(1) is whether a disinterested reasonable observer who knows all the circumstances would harbor doubts about the judge's impartiality. A motion for disqualification must be supported by an affidavit which clearly sets forth the factual basis for the belief that grounds for disqualification exist. Fu Zhou Fuyan Pelagic Fishery Co. v. Wang Shun Ren, 7 FSM R. 601, 605 (Pon. 1996).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

A motion to recuse is untimely when it is brought over five weeks after the deadline for pretrial motions and when the movant had known for months which judge would be presiding over the trial. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 647-48, 649 (Pon. 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).

By statute, a motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

When the issue of recusal was brought to the trial judge's attention well before the date he set for pretrial motions, a judge's obligation to recuse himself is not dependent on bringing a motion, and the motion was timely by the terms of the statute because it was brought before trial even though brought after the date set for pretrial motions the motion to recuse cannot be denied as untimely. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

4 F.S.M.C. 124(6) provides that a party may move to disqualify a Supreme Court justice, and requires that such a motion be accompanied by an affidavit stating the reasons for belief that grounds for disqualification exist. Any disqualification motion must be filed before the trial or hearing, unless good cause is shown. Hartman v. Bank of Guam, 10 FSM R. 89, 95-96 (App. 2001).

A party in cases involving related issues is not entitled as a matter of right to a different judge for each case. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

Recusals are not required to be in writing. While the better practice would be that recusals be in writing, and the Legislature could require that practice if it so chose, there is currently no such statutory or constitutional requirement. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for

pretrial motions and where the movant has known for months which justice would be presiding over the trial. Shrew v. Kosrae, 10 FSM R. 533, 535 (Kos. S. Ct. Tr. 2002).

A motion to recuse should be brought before the trial or hearing unless good cause is shown filing it at a later time. Tolenoa v. Kosrae, 11 FSM R. 179, 182 (Kos. S. Ct. Tr. 2002).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

The trial court may deny a motion for new trial when the motion's basis is the judge's failure to recuse himself and the party making the motion was, since the beginning of the case, aware of the information upon which the motion is based. Tolenoa v. Kosrae, 11 FSM R. 179, 184 (Kos. S. Ct. Tr. 2002).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavits establishing a factual basis for the motion, and there must be a hearing where the moving party has the burden of proving the basis for the motion. Allegations that provide the basis for a motion to recuse must be proven by admissible and competent evidence. Kupenes v. Ungeni, 12 FSM R. 252, 259 (Chk. S. Ct. Tr. 2003).

A motion to disqualify a judge that is not supported by an affidavit which explains the factual basis for the motion is insufficient and will be denied. Allen v. Kosrae, 13 FSM R. 55, 59 (Kos. S. Ct. Tr. 2004).

An application for a trial judge's disqualification must be filed at the earliest opportunity. A motion to recuse should be brought before the trial or hearing unless good cause is shown for filing it at a later time. Kosrae v. Langu, 13 FSM R. 269, 271-72 (Kos. S. Ct. Tr. 2005).

It is necessary to show a factual basis – not just speculation or conclusions, for questioning a judge's impartiality. A factual basis must be provided by affidavit or other admissible evidence. Counsel's arguments are not evidence and therefore cannot form a "factual basis" for questioning a judge's impartiality. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Mere argument by counsel, verbal or written, is not the basis on which motions to recuse are determined. It is the movant's burden to go beyond speculation or conclusion and show a factual basis for recusal. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

Generally, an affidavit is required to provide a factual basis for questioning a judge's impartiality, but other admissible evidence may also be used to support a motion to recuse. When statements made by the presiding justice himself, regarding his own extrajudicial knowledge of facts relating to the subject incident and the defendant's alleged conduct, were made on the record in the courtroom at hearings, these statements can be used for questioning the justice's impartiality and a basis for recusal. Under these specific facts and in this case, the requirement for an affidavit is satisfied by other admissible evidence: the record of the hearings. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

The court must decide a recusal motion before it can consider and rule on substantive motions, although the court can probably entertain and decide merely procedural matters before ruling on the recusal motion. FSM v. Wainit, 13 FSM R. 293, 294 (Chk. 2005).

By state law, a motion to disqualify a justice must be referred to another justice for ruling. Ruben v. Petewon, 13 FSM R. 383, 388 (Chk. 2005).

If the Acting Chief Justice knows that a particular associate justice is disqualified there is no reason for him to take the pointless step of referring the matter to that associate justice for that justice to say so. Ruben v. Petewon, 14 FSM R. 146, 148 (Chk. S. Ct. App. 2006).

Upon receipt of a disqualification motion, the Chuuk State Supreme Court justice must refer the motion to another justice, to hear the motion and rule upon it. There is no room for discretion. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

When a party files a motion to remove a trial justice from presiding over a case, irrespective of nomenclature, the party is attacking that justice's perceived bias or conflict of interest. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

When a petition addressed to an appellate justice asking that he disqualify himself has been denied by that justice, the party may file a petition for a writ of prohibition to prevent that justice from continuing to sit on the appeal. When the other two panel justices are of the opinion that the writ of prohibition clearly should not be granted, they will deny the petition. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

The FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it later. When good cause was not shown for filing a disqualification motion four months after the hearing for which the movant seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

When a party has filed a writ of prohibition directed to disqualify one appellate justice, the remaining members of the appellate panel may deny that petition if it clearly should not be granted. Goya v. Ramp, 14 FSM R. 305, 308 n.2 (App. 2006).

Since the FSM disqualification statute requires that a motion to disqualify a justice be filed before the trial or hearing unless good cause is shown for filing it at a later time, when good cause was not shown for filing a disqualification motion four months after the hearing for which the movant now seeks a justice's disqualification, it will be denied as untimely. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

A motion for a Chuuk State Supreme Court justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible competent evidence. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is a

showing of good cause for filing it at a later time. Nakamura v. Sharivy, 15 FSM R. 409, 412 (Chk. S. Ct. Tr. 2007).

A motion to recuse is deficient and will be denied when it was filed without an accompanying affidavit as required by law because without an affidavit establishing the degree of relationship between the justice and the parties, the court has no basis to grant the motion, and when there has been no attempt to comply with the statutory requirement that good cause be shown for filing the motion after trial has already begun. Nakamura v. Sharivy, 15 FSM R. 409, 413 (Chk. S. Ct. Tr. 2007).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. 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 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).

An application to disqualify a trial judge ought to be filed at the earliest opportunity. This principle should be applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

To permit a party to disqualify a judge after learning how the judge intended to rule on a matter would permit forum-shopping of the worst kind. It would also be inequitable, because it would afford the moving party an additional opportunity to achieve a favorable result while denying a similar opportunity to its adversary. For these reasons, it is generally agreed that a party who has a reasonable basis for moving to disqualify a judge should not be permitted to delay filing a disqualification motion in hope of first obtaining a favorable ruling, and then complain only if the result is unfavorable to his cause. 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).

Following the judge's disclosure on the record of any basis for disqualification other than personal bias or prejudice concerning a party, the judge may ask the parties and their lawyers to consider, out of the judge's presence, whether to waive disqualification, and, if the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement must be incorporated in the record of the proceeding. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 (App. 2011).

When the Land Court judge asked the parties and counsel to consider whether to waive his disqualification but there was no recess taken after the judge informed the parties's counsel of his possible disqualification and when it may be inferred that the Land Court judge participated in the waiver process and actively solicited a waiver and that an agreement by all parties and their counsel (assuming that there was one) on waiver was not, as required, made out of the judge's presence and without his participation, the

Land Court judge's disqualification was not properly remitted and his decision will be vacated and the matter remanded. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504-05 (App. 2011).

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible, competent evidence. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is good cause for filing it at a later time. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

A disqualification motion is deficient and untimely when it is unclear what involvement, if any, the trial judge had in the instant matter; when it was only after a judgment had been rendered in another's favor, and after the denial of two motions to set aside the judgment, that the movant sought to disqualify the trial judge; when the movant has failed to establish "good cause" for filing the disqualification motion almost seven months after the judgment was rendered; and when, in support of its disqualification motion, the movant merely stated that it "did not have knowledge of the facts constituting a disqualification until about seven months, or this month, June 2014," since this statement, without anything further, is insufficient to meet the good cause standard. In re Title to Two Parcels, 19 FSM R. 482, 485-86 (Chk. S. Ct. Tr. 2014).

Generally, any application to disqualify a trial judge must be filed at the earliest opportunity, and this principle is applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until after an unfavorable ruling has been made. Just as 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, a litigant may not sit idly by and seek to disqualify a judge only after an adverse final judgment has been rendered. George v. Palsis, 20 FSM R. 157, 159-60 (Kos. 2015).

A motion for a justice's disqualification must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A motion to disqualify a judge that is not supported by an affidavit explaining the factual basis for the motion, is insufficient and will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

For the purpose of a recusal motion, a temporary justice is considered an FSM justice, to whom 4 F.S.M.C. 124 applies. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

A petition for a writ of prohibition to disqualify a trial court judge is procedurally deficient when it includes a lone exhibit which reflects the trial judge's order; when there is no affidavit stating the reasons for the belief that grounds for disqualification exist; when it lacks a memorandum of points and authorities; and

when it includes a motion to stay that does not properly belong before the appellate division since it should have been filed in the trial court. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner for a writ of prohibition must allege facts that show an appearance of partiality. Without a supporting affidavit, the purported facts underpinning the allegation are absent, and only the petitioner's subjective assertions remain, and when the petitioner's unsupported allegations that the judge is not impartial are purely speculative, they are insufficient to support his disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

A court must decide a disqualification motion and give its reasons for its decision before it can rule on any other matter. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 569 (Pon. 2016).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The standard for disqualification in a proceeding is whether a disinterested reasonable person, knowing all the circumstances, would harbor doubts about a judge's impartiality. There is a presumption that judicial officers are unbiased and the burden of proof rests with the party asserting an unconstitutional bias to demonstrate otherwise. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

– Recusal – Rule of Necessity

Practical and policy considerations relating to judicial administration in the FSM could be viewed as justifying invocation of the Rule of Necessity whereby judges are obliged to hear and decide cases from which they might otherwise recuse themselves if no other judge is available to hear the case. FSM v. Skilling, 1 FSM R. 464, 469-70 (Kos. 1984).

The Rule of Necessity has been held in the United States to prevail over the disqualification provisions of 28 U.S.C. § 455 and Canon 3C of the ABA Code of Judicial Conduct, both of which are nearly identical to the language of 4 F.S.M.C. 124(1) and (2). FSM v. Skilling, 1 FSM R. 464, 470-71 (Kos. 1984).

Given the social and geographical configuration of Micronesia the Rule of Necessity may oblige judges to hear and decide cases from which they would otherwise recuse themselves. Factors to be considered include delay, expense, and impact on other cases. Nahnken of Nett v. United States (I), 6 FSM R. 318, 323-24 (Pon. 1994).

Because parties have a right to trial before a justice duly appointed by the President under Article XI of

the Constitution the Rule of Necessity may be invoked to prevent recusal of a judge when no other judge is qualified to hear the case. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 644, 648 (Pon. 1996).

The only time the Rule of Necessity may apply to allow a judge not to recuse himself is if no other judge is available to hear the case. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

If the Chief Justice is a member of a Chuuk State Supreme Court appellate panel, or is so removed or disqualified, then the most senior associate justice who has not been removed or disqualified from the case shall appoint the temporary justices, but if all Chuuk State Supreme Court justices are disqualified and there is no associate justice that could appoint a panel in the Chief Justice's stead and there is no provision for the Chief Justice to appoint a temporary justice to make the appointments, then the rule of necessity, in this limited circumstance, allows the Chief Justice to make the panel appointments. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

The "rule of necessity" cannot be applied to force an otherwise disqualified justice to serve because as long as it is possible to appoint a temporary judge who is not disqualified, the rule of necessity has no application and cannot be resorted to. Ruben v. Petewon, 14 FSM R. 146, 148 n.1 (Chk. S. Ct. App. 2006).

The only time the "rule of necessity" may be applied to allow a judge not to recuse himself is if no other judge is available to hear the case. The "rule of necessity" cannot be applied to permit an otherwise disqualified justice to serve as long as it is possible to appoint a temporary judge who is not disqualified. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

CRIMINAL LAW AND PROCEDURE

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. FSM v. Boaz (II), 1 FSM R. 28, 31 (Pon. 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code. 11 F.S.M.C. 108, 1003. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

Title 11 of the Trust Territory Code is not inconsistent with nor violative of the FSM Constitution; therefore 11 Trust Territory Code continued in effect after the effective date of the Constitution and until the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The FSM Supreme Court is required by the National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

Section 102(2) of the National Criminal Code preserved all the substantive rights of defendants applicable in a guilt determination proceeding as of the time of the crime's commission. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 191-92 (App. 1982).

Change of forum for Title 11 Trust Territory Code cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the defendants' substantive rights. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

The court must first look to sources of law and circumstances here to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts. Alaphonso v. FSM, 1 FSM R. 209, 214 (App. 1982).

In the FSM, criminal cases are tried before the judge as fact finder. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

Although the Model Penal Code was the primary source for the National Criminal Code it was modified to suit the particular needs of the area. Laion v. FSM, 1 FSM R. 503, 511 (App. 1984).

When more than one offense or wrongful intent is charged in a single count, the trial court may require the government to select among the charges if failure to do so might result in prejudice to the defendant. However, this is a matter within the trial court's discretion. Laion v. FSM, 1 FSM R. 503, 517 (App. 1984).

A defendant is not unfairly prejudiced or incapable of preparing an intelligent defense, simply because the government insisted on each of 11 F.S.M.C. §§ 918 and 919's three adjectives, "intentionally, knowingly and recklessly," as possibly accurate descriptions of a defendant's frame of mind. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

The FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. Convictions should not be reversed, nor the information thrown out, because of minor, technical objections which do not prejudice the accused. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

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 7 of the FSM Rules of Criminal Procedure is based upon Rule 7 of the Federal Rules of Criminal Procedure employed by the United States federal courts. Engichy v. FSM, 1 FSM R. 532, 541 (App. 1984).

Unchartered and unincorporated municipalities in Truk State have authority to enact curfew ordinances as long as they do not conflict with Truk State laws. David v. Fanapanges Municipality, 3 FSM R. 495, 497 (Truk S. Ct. App. 1988).

The function of the criminal law is to declare what conduct a society considers to be unacceptable and worthy of sanctions at the instigation of government on the society's behalf; the criminal law is thus the principal vehicle for the expression of the people's standards of right and wrong. Hawk v. Pohnpei, 4 FSM R. 85, 91 (App. 1989).

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM R. 165, 169 (App. 1989).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM R. 266, 281-82 (App. 1990).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is

harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

Criminal statutes in effect on the effective date of the State of Chuuk Constitution (Oct. 1, 1989) that are consistent with the Constitution continue in effect. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

The law treats a company, although not an actual, living person, as a person for purposes of liability, and may hold it criminally liable. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The unambiguous words of a statute which imposes criminal penalties cannot be altered by judicial construction to punish someone not otherwise within its reach, no matter how much he deserves punishment. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A general section in a statute cannot expand the class of principals to whom the more specific sections are directed. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A statute not cited in the information and not mentioned by the prosecution until closing argument cannot be the basis of criminal liability. FSM v. Webster George & Co., 7 FSM R. 437, 440 (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).

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).

The criminal conviction of two defendants who never appeared for trial is plain error, and their trial court convictions must be vacated. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

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).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes, one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

Congress has the express power to define national crimes, and until the Constitution was amended in 1991, Congress also had the express power to define major crimes. FSM v. Fal, 8 FSM R. 151, 153 (Yap 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).

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 criminal law is not to be used to settle conflicting claims to property. Property disputes in Micronesia strain the social fabric of the communities in which they occur. The filing of a criminal action injects an element of criminality into a matter which is, at its core, civil, and increases that strain. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

The legislative history of Title 54 indicates that it was created as a system primarily aimed at recovering revenue rather than punishing wrongdoers with lengthy prison sentences and that the fines and criminal penalties adopted in it were thought to be commensurate with the specified wrongdoing. FSM v. Edwin, 8 FSM R. 543, 547 (Pon. 1998).

The National Criminal Code was primarily drawn from the Model Penal Code modified to suit the particular needs of the area. FSM v. Edwin, 8 FSM R. 543, 548 (Pon. 1998).

There is no clearly expressed Congressional intent for the criminal code to be used to prosecute tax crimes. Since the FSM had existing laws with comprehensive civil and criminal penalties applicable to tax crimes at the time the criminal code was adopted, the implication is that the criminal code was not intended for the purpose of prosecuting such crimes. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

A court's finding of guilt and sentencing would not render illegal, or prevent, customary forgiveness of the defendant by the victim's family or clan. Whatever the court does, customary settlement may remain desirable to resolve lingering hostility and disputes between the families. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

A customary forgiveness ceremony resolving disputes among families or clans may not prevent the court system from determining the individual guilt of the defendant and considering whether societal notions of justice and the need to uphold law and order require fining, imprisonment or other restriction of the defendant's freedom. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 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).

The purpose of an information, summons or warrant is to inform the defendant of what he is called upon to defend. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court is authorized by law to do all acts as may be necessary for due administration of justice, including the issuance of a bench warrant. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

The purpose of a preliminary examination is two-fold. The court must determine whether there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

No probable cause to believe that a criminal offense has been committed exists when the defendants' alleged conduct as set out in the information has not been made criminal under any statute, rule, or regulation to which the court's attention has been directed. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 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).

The statute that provides for joint law enforcement agreements between the national government and the states reflects a public policy in favor of cooperative law enforcement undertakings. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

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).

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).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Although the court must first look to sources of law and circumstances in the FSM to establish legal requirements in criminal cases rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed an FSM criminal 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 v. Wainit, 11 FSM R. 1, 11 n.2 (Chk. 2002).

The Pohnpei state criminal statutes were intended to provide for criminal penalties for those who commit certain acts which are prohibited by the Act. The Pohnpei Crimes Act is not intended to create a basis for private parties to sue other parties, but to enable the Pohnpei state government to be able to punish those persons who violate provisions of the Act. Statutes which do not by their terms provide citizens with a cause of action for money damages cannot be the basis for private damages claims. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 25 (Pon. 2002).

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).

The word "demand" means "ask as by right." When a police officer did request and ask as by right for the defendant's driver's license, even though the officer did not use the word "demand," the officer's request to the defendant for his driver's license satisfies the statute's "demand" requirement. Kosrae v. Sigrah, 11

FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement, may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

When there are no reported decisions in the FSM interpreting a Chuuk Criminal Rule, the Chuuk State Supreme Court may look for guidance to cases addressing the issue from the U.S. Federal Circuits. Trust Territory v. Edgar, 11 FSM R. 303, 306 n.2 (Chk. S. Ct. Tr. 2002).

Logic dictates that certain events in the course of a criminal investigation and prosecution will involve ex parte communications with a judge. For example, giving advance notice of an impending search could defeat the purposes of the search where property permitted to be seized was located on the about-to-be searched premises. Similarly, giving a defendant notice of the filing of a criminal complaint or information prior to arrest could facilitate a defendant's avoidance of arrest were a defendant disinclined to cooperate with law enforcement. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

One subparagraph of a criminal rule should not be read so as to render another subparagraph unsusceptible to a meaning readily derived from the words employed at best, and indecipherable at worst. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

Prosecutions for offenses committed before the effective date of the new national criminal code are governed by the prior law, which is continued as if the new code were not in force. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

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 cases decided by other courts, when an FSM court has not previously construed 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 interpreting the rule. FSM v. Wainit, 12 FSM R. 105, 109 n.1 (Chk. 2003).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

When the statute's drafters deliberately chose the term "public officer" in an exception to the criminal statute of limitations instead of using the term "public servant," as they did in so many other criminal code sections, the statute's object and the drafters' intent was to apply this exception to all public officers, not just to those the criminal code defined as "public servants." This is the statute's plain and unambiguous meaning. If the drafters had intended to restrict the exception to just those persons that had been defined as "public servants," they could easily have inserted that term instead. FSM v. Wainit, 12 FSM R. 105, 111 (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).

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).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

A court cannot infer criminal conduct when the FSM statute at issue is not tailored to prohibit general threats, but only those that expressly are for the purpose of influencing a decision of a public officer. When there are no applicable criminal prohibitions in the Code of the Federated States of Micronesia, it is Congress, not the court, that must act to more specifically prohibit such threatening statements or conduct. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

Although the court must first look to FSM sources of law to establish legal principles in criminal cases rather than begin with a review of cases decided by other courts, the court may also look to U.S. sources for guidance in interpreting a rule when the FSM rule is identical or similar to a U.S. counterpart. FSM v. Wainit, 12 FSM R. 376, 381 n.3 (Chk. 2004).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and 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. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

The statute, 12 F.S.M.C. 204, and the rule, FSM Crim. R. 4(a), applying to criminal complaints cannot be followed when no complaint was ever filed and when the government earlier filed a criminal information. FSM v. Wainit, 12 FSM R. 376, 383-84 (Chk. 2004).

A complaint is made upon oath before a judicial officer or a clerk of the court. FSM v. Wainit, 12 FSM R. 376, 384 (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).

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 cases decided by other courts, when the court has not previously construed an FSM criminal procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance. FSM v. Wainit, 12 FSM R. 405, 409 n.3 (Chk. 2004).

The national criminal code signed into law on January 25, 2001, does not apply to acts committed before its effective date, and prosecutions for offenses committed before the effective date are governed by

the prior law, which is continued in effect for that purpose. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 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).

As a general principle, a court must impose the least severe sanction that will accomplish the desired result of prompt and full compliance with applicable criminal procedure. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

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' decisions, when an FSM court has not previously construed an FSM criminal 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. FSM v. Fritz, 13 FSM R. 85, 87 n.1 (Chk. 2004).

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' decisions, when an FSM court has not previously construed an FSM criminal 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 v. Fritz, 13 FSM R. 88, 90 (Chk. 2004).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

New constitutional rules affecting procedures in criminal cases apply only to those cases which are pending on direct review or which are not yet final when the new rules are announced. Thus a new constitutional rule announced in a January, 2004 decision will apply to a May 2003 case still pending at that time. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

Criminal Rule 26.2 creates no right to production of statements of witnesses until the witness has testified on direct examination, but if the prosecution insists upon literal compliance with Rule 26.2(a) the practical result is that a recess must be taken at the conclusion of the direct examination of every witness, and the court would very likely abuse its discretion if it refused to grant a recess. The usual practice in the FSM under Rule 26.2 has been that the prosecution voluntarily provides defense counsel access to witness statements in advance of their testimony and the court finds this a salutary and commendable practice. FSM v. Walter, 13 FSM R. 264, 267-68 (Chk. 2005).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than start with a review of other courts' decisions, when the court has not previously construed an FSM criminal 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 v. Walter, 13 FSM R. 264, 267 n.1 (Chk. 2005).

When no reported FSM case has construed Criminal Rule 26.2(a), the court may use U.S. sources construing the identical U.S. Federal Rule of Criminal Procedure 26.2(a) and its predecessor statute, 18 U.S.C. § 3500(a) (the Jencks Act), as tools in construing FSM Criminal Rule 26.2(a). FSM v. Walter, 13 FSM R. 264, 267 n.1 (Chk. 2005).

Neither state law nor court rules require a criminal defendant to dispute any evidence relating to the allegations prior to trial. The defendant is permitted to dispute evidence presented by the state at trial, through cross-examination or by producing independent evidence. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

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' decisions, the court may look to U.S. sources for some help in interpreting the rule when FSM cases do not provide a full answer. FSM v. Wainit, 13 FSM R. 301, 304 n.1 (Chk. 2005).

It is in the public's interest that the judicial process should both appear fair and be fair in fact. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 2005).

A corporation, or unincorporated association, or other organization is a "person" under the criminal code. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

Under the January 25, 2001 national criminal code, prosecutions for offenses committed before that effective date are governed by the prior law, which is continued as if the new act were not in force. FSM v. Wainit, 13 FSM R. 532, 536 (Chk. 2005).

The court must first look to FSM circumstances and sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, but when an FSM court has not previously construed an FSM criminal rule that is similar or identical to a U.S. rule, the court may use U.S. sources for guidance in interpreting the FSM rule. FSM v. Wainit, 13 FSM R. 532, 536 n.2 (Chk. 2005).

When none of the objections to admission of evidence are of the type that should be addressed in a pretrial motion to suppress, which is generally reserved for evidence allegedly obtained illegally, the motion to suppress should be denied and the issue of whether any of the evidence is admissible is a question that should, and will, come up in an orderly fashion during trial and be ruled upon if offered and objected to. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

Since the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution, FSM courts may look to United States decisions to assist in determining the meaning of article IV, section 7 because when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 150, 151 n.1 (Chk. 2006).

Although the court must first look to FSM sources of law 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 FSM Criminal Procedure Rule 14 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. Kansou, 14 FSM R. 171, 175 n.2 (Chk. 2006).

As a general principle, a court must impose the least severe sanction that will accomplish the desired result of prompt and full compliance with applicable criminal procedure. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

Regardless of what the trial court chose to call it, a "judgment of conviction" that contains the plea, the findings (both general and special), and the adjudication, but it does not contain the sentence was not a judgment of conviction because a judgment of conviction must set forth the plea, the findings, and the

adjudication and sentence. Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006).

When an FSM (or Kosrae) criminal rule which is identical or similar to a U.S. rule has not previously been construed, a court may look to U.S. sources for guidance in interpreting the rule. Neth v. Kosrae, 14 FSM R. 228, 233 n.2 (App. 2006).

On December 15, 2000, the national criminal code enacted in 1982 (as amended) applied to criminal offenses. On January 25, 2001, a new national criminal code came into effect. It provided that prosecutions for offenses committed before the effective date of the new national criminal code are governed by the prior law, which is continued as if this act were not in force. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM appellate rule is identical or similar to a U.S. counterpart and has not been previously construed, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Petewon, 14 FSM R. 320, 325 n.1 (Chk. 2006).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, an FSM court may consult U.S. sources for guidance in interpreting a criminal procedure rule, which is identical or similar to a U.S. counterpart, when it has not previously construed that FSM rule. FSM v. Sam, 14 FSM R. 328, 332 n.1 (Chk. 2006).

Although FSM courts 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' decisions, when a court has not previously construed a criminal 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. Kinere v. Kosrae, 14 FSM R. 375, 382 n.1 (App. 2006).

Since Kosrae's Rules 11(e)(1) and 52(b) are derivative of their United States counterparts, the court therefore, may examine United States case law interpreting those rules. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When any person who possesses or uses any firearm is guilty of a felony and the use of the firearm was the discharge of a handgun on a public road in a village at night, it is violent felony. Reg v. Falan, 14 FSM R. 426, 433 (Yap 2006).

Court-promulgated rules are interpreted using the principles of statutory construction. FSM v. Petewon, 14 FSM R. 463, 466 (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).

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 court must look first to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than start with a review of other courts' cases, but when the court has not previously construed an FSM criminal 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 v. Fritz, 14 FSM R. 548, 552 n.2 (Chk. 2007).

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).

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).

When FSM courts have not yet addressed an issue, the court may look to decisions from jurisdictions outside the FSM for authority, as well as secondary authorities, all the while keeping in mind the suitability for the FSM of any given principle. Chuuk v. William, 15 FSM R. 483, 489 n.2 (Chk. S. Ct. Tr. 2008).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the language in the FSM Constitution and the U.S. Constitution is similar or identical, it is appropriate to look to United States constitutional law and its courts's interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended scope of the FSM Constitution's words. FSM v. Sam, 15 FSM R. 491, 493 n.1 (Chk. 2008).

Kosrae Criminal Procedure Rule 5, as amended by GCO 2004-3, requires that a defendant have an initial appearance after arrest within a reasonable time. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

Although the court must first look to FSM sources of law for legal requirements in criminal cases rather than start with a review of other courts' decisions, when the court has not previously construed Criminal Procedure Rule 11's applicability to probation revocation or Rule 32.1's scope and those rules are similar or identical to a U.S. rule, it may look to U.S. sources for guidance in interpreting those rules. FSM v. William, 16 FSM R. 4, 7-8 n.1 (Chk. 2008).

When the court has not previously construed Criminal Procedure Rule 12(a), 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. Sato, 16 FSM R. 26, 28 n.1 (Chk. 2008).

A person accused of committing a national crime can rely only on his rights under the national constitution to protect himself from the actions of the national government and its agents. When the state is prosecuting national crimes in the national court, it is acting as the national government's agent pursuant to a joint law enforcement agreement, and the court will therefore only consider whether the accused's rights were violated under the FSM Constitution's due process and equal protection clauses. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

To the extent that the issues that the applicants for a writ of habeas corpus seek to raise in a moot application are significant and relevant to other issues to be raised and considered in a criminal case, they should be raised for consideration in that case in the proper manner or in a civil suit for damages. In re Mefy, 16 FSM R. 401, 403-04 (Chk. 2009).

When the 2009 Chuuk-FSM Joint Law Enforcement Agreement contains a clause whereby the FSM national government and the State of Chuuk "agree that at the end of each fiscal year the terms of this agreement shall continue in effect until such time it is terminated or renewed by the parties" and when neither party has given the required thirty days notice to terminate the 2009 Joint Law Enforcement Agreement, the agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

A joint law enforcement agreement clause that states – "Any renewal shall be subject to the availability of funds." – applies only to a renewal, not to a continuation of the current agreement. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

Although the court must first look to FSM sources of law for purposes of establishing legal requirements in criminal cases, when an FSM court has not previously construed an FSM evidence rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources on the United States Federal Rules of Evidence for guidance. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 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).

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. Billimon, 17 FSM R. 313, 316 (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).

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).

For criminal matters, the court clerk must keep a book known as the "criminal docket" in which, among other things, must be entered each order or judgment of the court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 n.7 (App. 2011).

An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Alluki, 17 FSM R. 385, 387 (Chk. S. Ct. Tr. 2011).

Although to establish legal requirements in criminal cases, the court must first consult FSM sources of law rather than begin with a review of other courts' cases, the court may consult U.S. sources for guidance in interpreting an FSM criminal procedure rule when it has not previously construed the rule and the rule is

identical or similar to a U.S. counterpart, such as when court has not previously considered some aspects of an information's sufficiency under Criminal Rule 7(c). FSM v. Esefan, 17 FSM R. 389, 394 n.1 (Chk. 2011).

When establishing legal requirements in criminal cases, the court must look first to FSM sources of law rather than start with a review of other courts' cases, but then the court can and should consider decisions and reasoning of courts in the United States and other jurisdictions in arriving at its own decisions. FSM v. Esefan, 17 FSM R. 389, 396-97 n.3 (Chk. 2011).

An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

The Chuuk State Supreme Court may consider unpublished cases when provided with copies certified by the clerk of court and when such copies are contemporaneously provided to opposing counsel. Chuuk v. Hauk, 17 FSM R. 508, 511 (Chk. S. Ct. Tr. 2011).

Although the court must first look to FSM sources of law 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 criminal 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. FSM v. Meitou, 18 FSM R. 121, 126 n.1 (Chk. 2011).

The court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' cases, but when an FSM court has not previously construed an FSM criminal procedure rule drawn from a similar U.S. rule, the court may look to U.S. sources for guidance in construing the rule. FSM v. Semwen, 18 FSM R. 222, 225 n.1 (Chk. 2012).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

A guilty finding is not a "judgment of conviction" because in order to be a judgment of conviction, the "judgment of conviction" must set forth the plea, the findings, and the adjudication and sentence. Since a "judgment of conviction" must contain the sentence, it can only be entered after the sentence is pronounced. Benjamin v. Kosrae, 19 FSM R. 201, 204-05 n.1 (App. 2013).

Criminal law and the law of torts (more than any other form of civil law) are related branches of the law; yet in a sense they are two quite different matters. Criminal law's aim is to protect the public against harm, by punishing harmful results of conduct or at least situations (not yet resulting in actual harm) which are likely to result in harm if allowed to proceed further. Tort law's function is to compensate someone who is injured for the harm he or she has suffered. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

Frequently a defendant's conduct makes him both civilly and criminally liable. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

When the defendant has not indicated what specific pieces of evidence he seeks to exclude and the prosecution does not appear to have informed the defendant what specific evidence it will seek to introduce at trial, the court is not in a position to rule on the evidence's admissibility and will deny the defendant's current motion in limine and will rule on the admissibility of any particular evidence that the defendant objects to if and when that issue comes properly before the court. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1

(Pon. 2014).

Title 24 imposes criminal liability on any person who commits an act prohibited by that title. A person is defined as any natural person or business enterprise or similar entity. It does not include a vessel in rem. By statute, a person specifically includes a corporation, partnership, cooperative, association, or government entity. Although not an actual, living person, the law treats a company as a person for the purposes of liability. FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

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).

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).

When civil depositions would trigger a variety of procedural prejudices; when the defendants cannot use the more lenient rules of civil procedure to depose the witnesses before the criminal case; when the depositions raise significant conflicts with the defendants' own constitutional right against self-incrimination; and when the depositions will likely not be needed following the criminal hearing and thus potentially a duplicative waste of judicial resources, there is good cause to stay the depositions until after the criminal probable cause hearing, but a full stay is not warranted. Due to the vessel's significant value and business losses that are occurring in the civil matter, the substantial prejudice to the defendants outweighs granting a complete stay in the civil action until the criminal case's conclusion. In the interest of justice and judicial economy, the court will exercise procedural flexibility to stay only those matters, such as depositions, that would cause conflicts with the criminal proceeding. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 628 (Pon. 2014).

Public policy supports justly resolving criminal cases while allocating resources efficiently within the criminal justice system. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

A guilty finding, by itself, is not a conviction. For a document to be a judgment of conviction, it must set

forth the plea, the findings, and the adjudication and sentence. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

Regardless of what it is labeled, a document that contains the plea, the findings (both general and special), and the adjudication, but does not contain the sentence cannot be a judgment of conviction since a judgment of conviction must contain the plea, the findings, and the adjudication and the sentence. Lee v. Kosrae, 20 FSM R. 160, 164 n.1 (App. 2015).

In matters of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

– Accessory

The offense of accessory requires proof beyond a reasonable doubt of a person who, knowing that an offense has been committed, receives, relieves, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

When the defendants, through their actions, did comfort and assist a relative in order to prevent his apprehension or arrest by a police lieutenant and they knew that that their relative had committed a criminal offense and that the police lieutenant was attempting to arrest him for that offense and the defendants admitted that they were trying to get him away so that he could be delivered to other relatives, the state has proved beyond a reasonable doubt all elements of the criminal offense of accessory. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

Under Kosrae State Code section 13.201, the three elements needed for a conviction of accessory under Section 13.201 are: 1) that the accused knew that an offense had been committed; 2) that the accused knew of another's commission of an offense; and 3) that the accused's assistance must have been given to another personally for the purpose of hindering or preventing his apprehension. Nena v. Kosrae, 14 FSM R. 73, 81 (App. 2006).

Since a statutory provision's plain meaning must be given effect whenever possible and courts should not broaden statutes beyond the meaning of the law as written, when there is no requirement in Section 13.201's express language that the accused be absent at the time the offense was committed, absence is thus not an essential element of the offense of accessory. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

– Aggravated Assault

The requisite intent for aggravated assault cannot be found simply by determining that the defendant purposely engaged in conduct which caused serious bodily injury. The crime of aggravated assault assumes at the very least disregard by the defendant for the well-being of the victim, and more typically, requires desire on the part of the defendant to injure the victim seriously. Laion v. FSM, 1 FSM R. 503, 519-20 (App. 1984).

Causal connection between an act done purposely and serious bodily injury to another is not sufficient to establish the crime of aggravated assault, even when the act is coupled with an intention to cause bodily injury. Serious bodily injury, not just an injury, must have been intended in order to commit aggravated assault. Laion v. FSM, 1 FSM R. 503, 520 (App. 1984).

In context of a claim of aggravated assault which calls for "causing serious bodily injury intentionally," the words, "engaged in the conduct," in 11 F.S.M.C. 104(4) mean engaging in the conduct of causing serious bodily injury. Section 104(4) mean engaging in the conduct of causing serious bodily injury or to cause a result, which is itself serious bodily injury. Laion v. FSM, 1 FSM R. 503, 520 (App. 1984).

A person is guilty of acting recklessly with extreme indifference to the value of human life under the

aggravated assault statute, 11 F.S.M.C. 916, if he voluntarily creates conditions or acts in such manner that a reasonable person would deem likely to result in serious injury to another. Machuo v. FSM, 6 FSM R. 40, 43 (App. 1993).

A defendant who holds a knife in his hands, engages in a fight while extremely drunk and knowing that at least one other person is in the immediate vicinity, and who strikes another with the knife causing serious physical harm is guilty of aggravated assault. Machuo v. FSM, 6 FSM R. 40, 44 (App. 1993).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes, one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

Kosrae statute provides that aggravated assault is assaulting, striking, beating, or wounding another with a dangerous weapon, with an intent to kill, rape, rob, inflict grievous bodily harm or to commit any other felony. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Shoes worn on the feet are dangerous weapons when used to kick a victim. Stationary objects can also be dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

The offense of aggravated assault is included in the resulting homicide. Accordingly, an aggravated assault conviction cannot be used to support a felony-murder conviction. Palik v. Kosrae, 8 FSM R. 509, 515 (App. 1998).

Aggravated assault in Yap is when a person attempts to cause serious bodily injury to another or causes serious bodily injury intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

Yap's aggravated assault statute requires a showing of serious bodily injury, and serious bodily injury, not just any injury, must have been intended. Serious bodily injury is bodily injury which creates a substantial risk of death or which causes serious, or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. The injury must be coupled with the specific intent to inflict that injury. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

Anyone who knowingly causes serious bodily injury has committed aggravated assault, but when a person has acted intentionally to beat someone any difference between these two mental states does not add materially to the discussion. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

A person commits aggravated assault under the extreme indifference recklessness state of mind when he voluntarily creates conditions or engages in behavior that a reasonable person would consider likely to result in serious injury to another. "Likely" means of such nature or so circumstanced as to render something probable. Yow v. Yap, 11 FSM R. 63, 68 (Yap S. Ct. App. 2002).

The offense of aggravated assault requires proof beyond a reasonable doubt of assaulting, striking, beating, or wounding another with a dangerous weapon, with an intent to kill, rape, rob, inflict grievous bodily harm, or to commit any other felony. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When the defendant pushed the victim's face into the pillow but there was no evidence presented that the pillow was used to assault, strike, beat or wound the victim, the pillow was not used as a dangerous weapon within the elements of the offense of aggravated assault and the state thus has not proven beyond a reasonable doubt the criminal offense of aggravated assault. Kosrae v. Sigrah, 12 FSM R. 562, 566

(Kos. S. Ct. Tr. 2004).

Under Kosrae state law, aggravated assault is classified as a category one felony, which carries a maximum sentence of imprisonment of ten years. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

The court will decline to draw a formal, arbitrary line about whether parts of the body can be dangerous weapons, or, about which parts of the body can be dangerous weapons. The analysis must be a functional one, looking at the capacity and manner of use and not the nature of whatever is used. Any object, article, substance, instrument, thing, item, or entity can become a dangerous weapon when it is used in a manner that may be anticipated to produce death or great bodily harm. Accordingly, teeth, depending on the manner in which they are used, may be a "dangerous weapon" under Kosrae State Code §13.303. This is primarily a question of fact and will depend on the presentation of evidence at trial. Kosrae v. Likiaksa, 14 FSM R. 618, 620 (Kos. S. Ct. Tr. 2007).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Chuuk v. William, 15 FSM R. 483, 488 n.1 (Chk. S. Ct. Tr. 2008).

– Aiding and Abetting

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by Rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. Engichy v. FSM, 1 FSM R. 532, 542 (App. 1984).

In criminal proceedings where several persons are charged with the murder of the same victim, the plain implication is that while one person's act may have been the direct cause of the death of the victim, the government surely will be contending that all others have participated or aided or assisted the killing in some way. It is inherent in a prosecution against multiple defendants for a single murder that defendants will be confronted with charges that they either actually killed the victim or assisted one or more persons who did so. Engichy v. FSM, 1 FSM R. 532, 544 (App. 1984).

Under 11 F.S.M.C. 301(2) defendants are held responsible for the natural consequences of joining and encouraging others in unlawful use of dangerous weapons and brutal beatings of others. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

In a criminal prosecution under 11 F.S.M.C. 301, where defendant's overt actions indicated their intention to aid those involved in attacks, and when it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

It is reasonably foreseeable that a robbery of watch and money from a Korean construction worker may be a probable consequence of a common plan to take a bottle from "some Koreans," and the person who suggests the plan and initiates efforts to attack one of the construction workers may be held guilty of aiding and abetting the robbery of watch and money carried out by his companions against another Korean worker, immediately after the defendant initiated the first attack. FSM v. Hadley, 3 FSM R. 281, 284 (Pon.

1987).

Under 11 F.S.M.C. 301, defendants who are charged with being aided and abetted by others are not entitled to an allegation specifying the acts constituting the aiding and abetting. Hartman v. FSM, 5 FSM R. 224, 232 (App. 1991).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. Hartman v. FSM, 6 FSM R. 293, 300-01 (App. 1993).

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 were 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).

When a law punishes criminal conduct only by a consignee and the government prosecutes agents of the consignee, it must proceed under the principles of vicarious criminal liability governed by 11 F.S.M.C. 301. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A person who allegedly aided and abetted another to commit an offense must be specifically charged with aiding and abetting in the information. FSM v. Webster George & Co., 7 FSM R. 437, 440 (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).

A person is criminally liable under 11 F.S.M.C. 301(1)(d) if he, whether or not being present during the commission of the crime, intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

The terms "aid" and "abet" are frequently used interchangeably, although they are not synonymous. To "aid" is to assist or help another. To "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Mere presence at the scene of a crime is not enough to hold someone criminally liable under an aiding or abetting theory. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

In order to convict any defendant of either aiding or abetting another, the government will have to prove beyond a reasonable doubt that that defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of an offense charged. The government will have to do this for each count for each defendant or that defendant will be acquitted on that count. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information

provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C. 1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

A bargained-for dismissal as part of a plea agreement is not tantamount to an acquittal and the dismissal of charges pursuant to a plea agreement is clearly not a finding of the same order as an acquittal and should not have the same implications. Therefore, an accused's bargained-for dismissal of an illegal possession of ammunition charge against him does not warrant the dismissal of the aiding and abetting illegal possession of ammunition charges against other defendants. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

In order to convict defendants of the aiding and abetting illegal possession of ammunition, the prosecution must first prove that another illegally possessed ammunition. But the dismissal of the illegal possession of ammunition charge against that other as the result of his bargained-for plea agreement in the other's case does not preclude the prosecution from proving, in this case, that the other illegally possessed ammunition, and then proving that the defendants aided and abetted him. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

The government is not required to specifically allege what acts constituted each of the defendants' alleged aiding and abetting, but the government is required, as a practical matter, to reasonably inform the defendants of what acts or omissions may result in their criminal liability. Chuuk v. Rotenis, 16 FSM R. 398, 400 (Chk. S. Ct. Tr. 2009).

An information charging certain defendants with liability for another's crimes of assault with a dangerous weapon, aggravated assault, manslaughter, and murder will be dismissed when the only conduct clearly asserted against the defendants is that they participated in the transporting and disposal of the body after the killing. To support the charges of liability for another's crimes, intent to participate in or ability to prevent the commission of those offenses must be shown, and, at a minimum, there must be some reasonable inference that the defendants had knowledge of or were present when the victim was struck. Liability for crimes of another cannot be based merely on conduct occurring after the crimes were already committed. But participation in the transporting and disposal of the body after the killing, if proven, results in criminal liability under other provisions of the Criminal Code. Chuuk v. Rotenis, 16 FSM R. 398, 400 (Chk. S. Ct. Tr. 2009).

Although, at one time, the FSM criminal code provided that no one could be convicted of aiding and abetting unless the information specifically alleged that the accused had aided and abetted and the information provided specific acts constituting the means of aiding and abetting, that provision was eliminated when the 2001 criminal code was enacted, making it no longer necessary for the information to recite the specific acts each alleged aider and abetter allegedly committed. But the FSM Supreme Court appellate division has held that it is a fatal variance between pleading and proof when an accused charged with aiding and abetting was not given proper notice of the conduct or acts underlying the violation since that could not give the accused sufficient notice for him to prepare his defense. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

When, in the information and supporting affidavit or in the material before the court during the pretrial motion hearing, no notice was given the defendants of any act or conduct by either of them that was alleged to constitute aiding and abetting, the aiding and abetting counts against them will be dismissed. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

When notice was given a defendant, and even relied upon by him in his motion, of his alleged conduct to aid and abet, the prosecution will be given time to either amend the information to include that conduct or to dismiss the aiding and abetting counts against him. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

As a general rule, a person has no legal duty to protect another from the criminal acts of third parties or to control the conduct of another. For criminal liability to be based upon a failure to act it must first be found that there is a duty to act – a legal duty and not simply a moral duty. Some criminal statutes themselves impose the legal duty to act. With other crimes the duty must be found outside the definition of the crime itself – perhaps in another statute, or in the common law, or in a contract. FSM v. Esefan, 17 FSM R. 389, 396-97 (Chk. 2011).

Under 11 F.S.M.C. 301(d), a person can be held liable as a principal if he "intentionally aids, abets, advises, solicits, counsels, encourages, commands, threatens, menaces or coerces another to commit a crime, or conspires with or otherwise procures another to commit a crime." FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

Although the terms are frequently used interchangeably, to "aid" is to assist or help another, and to "abet" means, in its legal sense, to encourage, advise, or instigate the commission of a crime. FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

The prosecution may pursue aiding and abetting charges against an accused when he is charged with being present and in the possession of a shotgun while another possessed a handgun and the accused encouraged the other to shoot certain persons. FSM v. Esefan, 17 FSM R. 389, 398 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Even though the crimes being aided and abetted took place on Guam, the FSM Supreme Court, under 11 F.S.M.C. 103(2)(a), has jurisdiction to convict and punish a defendant on the aiding and abetting charges when the aiding and abetting took place in Chuuk. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

In order to prove the aiding and abetting charges, the FSM must not only prove beyond a reasonable doubt that the defendant did something to, or was prepared to do something to, assist or help the other or to encourage, advise, or instigate the other in the commission of a crime, but it must also first prove that another committed the underlying crime. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

In order to prove the aiding and abetting charges, the prosecution must prove, and therefore must introduce evidence of other crimes not charged in the information (the crimes the defendant is accused of aiding and abetting the commission of), and thus must also introduce evidence about the other person(s) whose commission of those crimes he aided and abetted even when those underlying crimes did not occur in the FSM but happened in a foreign country. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

– Arrest and Custody

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraints or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

Where a municipal police officer intending to make an arrest for unlawful drinking, informs the accused that he is going to "take him to a place" because he was drinking and where there are indications that the accused understands that the officer is seeking to effect an arrest, there is sufficient compliance with the

requirement of 12 F.S.M.C. 214 that arresting officers "make every reasonable effort to advise the person arrested as to the cause and authority of the arrest." Loch v. FSM, 1 FSM R. 566, 569 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not use more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. Loch v. FSM, 1 FSM R. 566, 570 (App. 1984).

When no Micronesian legislative body has addressed the rules concerning arrests and when no party suggests that the matter is influenced by customary law, the principles stated in the *Restatements of Torts* about the use of deadly force may be considered in determining, for purposes of a criminal case, the scope of a police officer's right to use force while making an arrest. Loch v. FSM, 1 FSM R. 566, 570 n.2 (App. 1984).

Society's interest in the life of its members, even though they be felons or reasonably suspected of felony, is so great that the use of force involving serious danger to them is privileged only as a last resort when it reasonably appears that there is no other alternative except abandoning his attempts to make the arrest. In determining whether the use of such force is privileged, the actor has not the same latitude of discretion which is permitted to him in determining whether it is necessary to use force which is intended or likely to cause less serious consequences. Loch v. FSM, 1 FSM R. 566, 571 (App. 1984).

Deadly force by a police officer attempting to effect an arrest, may be justified by evidence indicating the defendant reasonably believes that there is no alternative method of effecting the arrest and that deadly force is necessary as a last resort. Loch v. FSM, 1 FSM R. 566, 571-72 (App. 1984).

Reasonableness of a police officer's conduct in using deadly force while making an arrest must be assessed on the basis of the information the police officer had when he acted. Loch v. FSM, 1 FSM R. 566, 571-72 (App. 1984).

It is quite reasonable for a police officer, who uses a deadly weapon in deadly fashion against a person armed with a knife, to obtain a weapon that will afford him a means of protecting himself against the knife and intimidating the person to be arrested. Loch v. FSM, 1 FSM R. 566, 573 (App. 1984).

When a police officer arms himself with a weapon to arrest a man armed with a knife, and then uses the weapon in a deadly fashion without first giving the person an opportunity to submit and without determining whether the person intends to use the knife to prevent arrest, this use of force cannot be viewed as a last resort necessary to the arrest not as reasonably necessary to protect the police officer from serious bodily injury. Loch v. FSM, 1 FSM R. 566, 573 (App. 1984).

While a police officer may use force to effect an arrest and to protect himself and other citizens, he may not use force simply to punish people he dislikes or those he decides have done wrong. The principal functions of the police officer are to preserve peace and order and to apprehend lawbreakers so that they may be tried by the courts and handled justly. Loch v. FSM, 1 FSM R. 566, 574-75 (App. 1984).

Punishment is no part of the police officer's assignment. A policeman who chooses to mete out punishment violates his office and does so at his own peril. Loch v. FSM, 1 FSM R. 566, 575 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

Suspicion of guilt can justify the extreme action of an arrest only when based upon reasonable grounds known to the arresting officer at the time of arrest so strong that a cautious man would "believe," that is, consider it more likely than not that the accused is guilty of the offense. Ludwig v. FSM, 2 FSM R. 27, 33 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

A police vehicle being used to transport an arrested person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 501(1). Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

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

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

Under FSM law, courts will rarely be required to look to the Constitution to determine the scope of any right a person in custody may have to be advised of rights before questioning because national statute establishes the rights of persons accused of national crimes. 12 F.S.M.C. §§ 218, 220. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

One should be considered "arrested," for the purposes of the right to be advised of his rights to remain silent when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained persons may be, or may have been, involved in commission of a crime. FSM v. Edward, 3 FSM R. 224, 232 (Pon. 1987).

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he must avoid using unnecessary violence. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

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

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art.

IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

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

A person arrested by the police must be brought before a justice of the state court without unnecessary delay, not to exceed twenty-four hours. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. George, 6 FSM R. 626, 628 (Kos. 1994).

Police officers' authority to issue citations in lieu of complaints or information is provided by law. In any case in which a policeman may lawfully arrest a person without a warrant, he may instead, subject to such limitations as his superiors may impose, issue and serve a citation upon the person, if he deems that the public interest does not require an arrest. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

If a defendant fails to appear in response to a summons, a warrant shall issue. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

A warrant must be signed by a judicial officer, contain the defendant's name, describe the offense, and command that the defendant be arrested and brought before a judicial officer. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

Police must bring an arrested person before a state court justice without unnecessary delay, not to exceed 24 hours. Estate of Mori v. Chuuk, 10 FSM R. 6, 10 n.1 (Chk. 2001).

A person is considered arrested for the purpose of the right to be advised of his constitutional rights, when his freedom is substantially restricted or controlled by a police officer who is exercising official authority based upon the officer's suspicion that the person may have been involved in the commission of a crime. Kosrae v. Erwin, 11 FSM R. 192, 193 (Kos. S. Ct. Tr. 2002).

Where a person's freedom was substantially restricted by a police officer when he was placed into a police car and where that person was under the police officer's suspicion that he was involved in the crimes committed earlier that evening, he was considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. And when the police officers failed to advise him of his constitutional rights at the time he was placed in the police car and considered arrested, all his statements made to the police after his arrest and placement into the police car and before he was advised of his constitutional rights, are inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 193-94 (Kos. S. Ct. Tr. 2002).

Kosrae state legislators are, in all cases except felony or breach of peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

When an arrest occurs will depend on the facts of each case. A person should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority, based upon the officer's suspicion that the detained persons may be or may have been involved in commission of a crime. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

The validity of an arrest is judged by an objective standard, instead of accepting the police officer's personal motives. Factors which may be considered include a police officer's display of a weapon, threatening presence of several officers, or a police officer's use of language indicating compliance is required. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

Arrest means placing any person under any form of detention by legal authority. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

Where a person's freedom of movement was not substantially restricted or controlled when he was stopped at a roadblock and was issued a citation and where there was no display of weapon by the police officer and there was no threatening presence or language by the police officers who conducted the roadblock, based upon an objective standard, the person was not arrested when he was stopped at a roadblock and issued a citation. Evidence obtained under these circumstances at a roadblock was not obtained in violation of a Senator's immunity from arrest. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

A person who is stopped for a routine traffic offense is not in custody for purposes of Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution, Article II, Section 1(e) provides that the defendant in a criminal case has a right to be informed of the nature of the accusation against him, and Kosrae State Code, Section 17.1102 further requires that at or before making an arrest, a person makes a reasonable attempt to inform the arrested person of the cause and authority of the arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested as to the cause and authority of the arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

When an arrest was executed in violation of law, the remedy is to suppress the defendant's statement to the police. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

When a defendant understood through the statements made by the officer that he was being arrested for the incident which took place on the previous day, the defendant was given adequate information regarding the cause and authority for his arrest, and therefore there was no statutory or constitutional violation of the defendant's right to be informed of the reason for his arrest. Kosrae v. Anton, 12 FSM R. 217, 219 (Kos. S. Ct. Tr. 2003).

Even assuming that there was an illegal arrest, a defendant is still not entitled to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. When he did not make any statements to the police, there are no statements to suppress. Kosrae v. Anton, 12 FSM R. 217, 219-20 (Kos. S. Ct. Tr. 2003).

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a

criminal activity. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the Defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM R. 320, 328 (App. 2004).

A defendant was not "in custody" prior to the administration of the field sobriety tests when he was instructed to perform the tests by the police officer, and was told by the police officer that if he failed two out of three tests, he may be arrested and taken to jail since he was not told that he would be taken to jail regardless of his performance of the tests. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person is "in custody" when a person's freedom is substantially restricted by a police officer. For example, where a person's freedom is substantially restricted by a police officer by being placed into a police car, based upon a police officer's suspicion that the person was involved in the crimes committed earlier that evening, that person is considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person who is stopped for a routine traffic offense is not in custody, for the purpose of requiring Miranda warnings, and persons who are stopped at a roadblock, where a person's freedom of movement is not substantially restricted or controlled, are not considered to be in custody and not considered to be arrested. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

When a defendant was followed by the Kosrae State Police, stopped at a traffic stop, questioned briefly and asked to perform field sobriety tests; when the traffic stop was conducted on a public road, where

passersby could witness the interaction of the police officers and the defendant and was conducted by only two police officers, which created a non-threatening situation; when the officers did not tell the defendant that he would be going to jail; and when there was no needless delay in the administration of the field sobriety tests, the defendant, when he was asked to perform the field sobriety tests, was not considered arrested and was not in custody for the purposes of Miranda rights, and the state was not required to provide the defendant his Miranda rights prior to administration of the tests. Kosrae v. Phillip, 13 FSM R. 449, 453 (Kos. S. Ct. Tr. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The onus is on the arresting officer to advise the person arrested as to the cause and authority of the arrest. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 (Pon. 2005).

When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant, but there may be one exception to this rule, however, and that is when a routine felony arrest takes place inside the suspect's home and there are no exigent circumstances (an emergency or a dangerous situation) to overcome the warrant requirement. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 n.4 (Pon. 2005).

The state and its department of public safety are subject to civil liability for denying an arrestee the opportunity to contact either family members or an attorney. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

Even if the 24-hour deadline to bring a defendant before a court or release him were interpreted to mean within a reasonable time, holding a person in jail for 63½ hours without an appearance before a judicial officer will subject the state and its department of public safety to civil liability. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A defendant's statutory right to be brought before the court within the 24 hours period goes to the heart of the procedural due process guaranteed to FSM citizens. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

Any person may perform a "citizen's arrest." Unlike an arrest by a law enforcement officer, a "citizen's arrest" cannot be based upon either a reasonable ground to believe or probable cause to believe a crime has been committed. A "citizen's arrest" is valid only if the one arrested was actually in the act of committing a criminal offense. FSM v. Wainit, 14 FSM R. 51, 55 n.2 (Chk. 2006).

If an arrested person refuses to submit or attempts to escape, the arresting person may use the force necessary to compel submission. In effecting an arrest, a police officer may not employ more force than he reasonably believes to be necessary. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the officer had when he acted. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Following commission of an offense, a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

When police officers viewed the defendant struggling and fighting and also heard the defendant swearing and yelling offensive words, based upon that conduct alone, the officers had reasonable grounds to believe that the defendant had committed one or more criminal offenses, including drunken and disorderly conduct, and disturbing the peace. The police officers' determination of reasonable grounds

and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Following an arrest of an accused, related or different criminal offenses may be charged in the information, based upon further investigation and research conducted by the state. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

In any case of arrest it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

The remedy for an unlawful detention over 24 hours is not the dismissal of the information against the defendant or the suppression of all evidence and statements obtained from him. The only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Evidence obtained in violation of 12 F.S.M.C. 218 is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible. The defendant is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. FSM v. Menisio, 14 FSM R. 316, 320 (Chk. 2006).

Although the plaintiffs contend that they were not drunk but merely had hangovers and that they could not be arrested for being hungover, the police, based on what they personally could see, hear, and smell, had probable cause to believe that the plaintiffs were under the influence of alcohol in public and had probable cause to arrest the plaintiffs. Whether the plaintiffs were actually intoxicated or just hungover is irrelevant since the police had probable cause to believe they were intoxicated. Thus, the plaintiffs' arrest and transportation to the state jail on Weno did not violate their civil rights. Walter v. Chuuk, 14 FSM R. 336, 339-40 (Chk. 2006).

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).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

One should be considered "arrested" within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. FSM v. Louis, 15 FSM R. 348, 353 (Pon. 2007).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

In accordance with the Chuuk Constitution provision against unreasonable searches, seizures, and invasions of privacy, no warrant may be issued but upon probable cause, supported by affidavit, specifically describing the place to be searched and the persons or things to be seized. An individual suspected of a crime must be released from detention unless the government can establish probable cause to hold that individual. Chuuk v. Chosa, 16 FSM R. 95, 97 (Chk. S. Ct. Tr. 2008).

A person is considered "arrested," for the purposes of the right to be advised of his right to remain silent when the person's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

Warrantless arrests are, under certain situations, lawful and authorized by statute. Arrest by police without a warrant is authorized when a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, or a policeman, even when it is not certain that a criminal offense has been committed, may detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

The remedy for a defendant's unlawful detention over 24 hours is not the suppression of evidence lawfully obtained before the 24 hours passed. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpej, 16 FSM R. 567, 573-74 (Pon. 2009).

The police have a right to conduct a routine traffic stop, and when they, in order to investigate and confirm or refute their suspicions, stopped a car in which there was a passenger who they suspected had abandoned his Honda after driving it off the road while intoxicated, they did not conduct any unlawful search or seizure. Berman v. Pohnpej, 16 FSM R. 567, 574 (Pon. 2009).

Typically, before an arrest can be made, a warrant must be issued for that arrest. A warrant requires a showing of probable cause, and probable cause exists when there is evidence and information sufficiently

persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Pohnpei state law authorizes policemen to make an arrest without a warrant when 1) a breach of the peace or other criminal offense has been committed, and the offender is shall endeavoring to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present; 2) anyone is in the act of committing a criminal offense; 3) a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it; and 4) even in cases where it is not certain that a criminal offense has been committed, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A person arrested for obstructing justice because she refused to give the police officers access to her car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Although an arrestee sustained some bruising to her wrists, the bruising was not the result of any arresting officer's conduct since when the arrestee was handcuffed, the cuffs were loose enough that they could slide up and down her wrists and there was enough space between the metal of the cuff and her skin to fit a regular-sized ballpoint pen, but during the travel from the arrest site to the police station, she struggled with the handcuffs, resulting in their tightening further around her wrists. Since the tightening of the handcuffs was not the result of an officer's conduct, but of the arrestee's own movements, the police did not use any unreasonable force in arresting and handcuffing her. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Upon arrest, the person arrested must be informed of his or her rights, including the right to remain silent and the right to counsel. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Under Pohnpei state law, any person arrested must be advised that a) the individual has a right to remain silent; b) the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before he is questioned further, and allow him to have counsel present while he is questioned by the police if he so desires; and c) the services of a public defender are available for these purposes without charge. Berman v. Pohnpei, 16 FSM R. 567, 575-76 (Pon. 2009).

An arrest is illegal if, at or before the time of arrest, the police make no reasonable effort to advise the person arrested the cause and authority for the arrest. Any person making the arrest must make every reasonable effort to advise the suspect why she is being arrested. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

When the police advised a person that she was being arrested for obstructing a police investigation at or before the time the handcuffs were placed on her wrists and also advised her that she was arrested for pushing a police sergeant, they did not unlawfully refuse to inform her of the reasons for her arrest and detention. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

It is unlawful for the police to keep an arrestee in custody for over 24 hours without bringing him before a judicial officer for a bail hearing unless the location of the nearest court makes such appearance impossible. An arrestee must be either released or charged with a criminal offense within a reasonable time, which under no circumstances shall exceed 24 hours. FSM v. Suzuki, 17 FSM R. 70, 73 (Chk. 2010).

When an accused has expressed a wish to meet with counsel before further questioning or to have counsel present during questioning, questioning must cease at once, and any attempt by police to ignore or override the accused's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218, and evidence obtained as a result of that violation is not admissible against an accused. FSM v. Suzuki, 17 FSM R. 70, 73-74 (Chk. 2010).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence or statements obtained from him after the first 24 hours of his detention. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Once an accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, the burden is on the prosecution to show that the evidence is still admissible. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Statements and evidence obtained from an accused during the first 24 hours after his arrest are not inadmissible merely because the accused ended up being detained for over 24 hours. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

FSM law requires that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

It would not have been reasonable for a police officer to have made an effort to advise a vehicle's occupants as to the cause and authority of the arrest before or during the arrests when the officer had every reason to believe that the two rifles in the vehicle were loaded and that one or more of the vehicle's occupants might be disposed to use those weapons. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

The statute does not, nor will the court, require an arresting officer, at or before the time of a person's arrest, to advise that person of the cause and authority for the arrest when to do so would endanger or imperil the arresting officer's life or safety or that of the general public. This is because the evident purpose of giving notice of the authority and cause for the arrest is to establish a procedure likely to result in a peaceable arrest. The failure to inform someone about to be arrested without a warrant of the authority and cause for the arrest does not invalidate that arrest. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

There is no set ritual or formula that must be followed to comply with the requirement that any person making an arrest shall, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. The notice is sufficient when it is such as to inform a reasonable man of the authority and purpose of the one making the arrest, and the reason thereof. Circumstances, without express words, may afford sufficient notice. FSM v. Suzuki, 17 FSM R. 114, 117 (Chk. 2010).

Arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

As a matter of good police practice, if a person is in the act of committing an offense or if it is too dangerous to make a reasonable effort to inform a person of the cause and authority of that person's arrest before or at the time of the arrest, the police should do so as soon as the person is safely in police custody. This should usually be before the arrestee is transported to a place of detention. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

It is unlawful to fail to either release or charge an arrested person with a criminal offense within a reasonable time, which under no circumstances must exceed twenty-four hours. An unlawful detainment does not in itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation may be used against the accused, and any person on the detainee's behalf may move the court for the

detainee's immediate release upon expiration of twenty-four hours from the arrest. Chuuk v. Sipenuk, 17 FSM R. 135, 136 (Chk. S. Ct. Tr. 2010).

Resort to self-help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

In criminal cases, pretrial detainees are entitled to such procedures as, the right to receive notice of the charges against them, an opportunity to respond to those charges before or during confinement, and the right to be brought before the court within 24 hours of arrest. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Reasonable suspicion, not probable cause, is all that is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Investigatory stops are based upon less than probable cause and are temporary in nature, and the information gained at the investigatory stop is used to confirm or dispel the initial suspicion, and then either arrest or release the person stopped. Berman v. Pohnpei, 17 FSM R. 360, 369-70 (App. 2011).

A traffic stop, no matter how brief, is a seizure. But this seizure is not a warrantless arrest such that probable cause is needed and the person stopped must immediately be advised of his or her rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

When the police had information from an off-duty police officer that gave them reason to suspect that a person had been involved in a car accident and that he was intoxicated, these facts equate to reasonable suspicion to stop him and investigate. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Under Chuuk Criminal Procedure Rule 4(a), if it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the accused's arrest shall issue to any officer authorized by law to execute it or, upon the government attorney's request, a summons instead of a warrant will issue. Chuuk v. Alluki, 17 FSM R. 385, 387-88 (Chk. S. Ct. Tr. 2011).

When the nature of the complaint that law enforcement received and responded to is unspecified either by hearsay or any other kind of evidence; when the accused is said to have been arrested and brought to DPS for processing as a result of police action triggered by the complaint but that arrest's details and circumstances are also unsubstantiated; and when the affidavit reads as a cursory afterthought to the arrest, incarceration, search, and ultimate seizure perpetrated by law enforcement on the accused, it could not, in and of itself, have supported a finding of probable cause prior to the arrest. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An illegal arrest will not entitle a defendant to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. Chuuk v. Hauk, 17 FSM R. 508, 512, 514 (Chk. S. Ct. Tr. 2011).

A warning is required when a custodial interrogation takes place and a suspect has been deprived of his freedom in a significant way. This differs from the situation where there was some evidence of illegal activity prior to the search, but it did not meet the probable cause standard necessary to arrest or search. In this type of situation, a search authorized by valid consent may be the only method by which evidence may be obtained. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

An eviction order is not an arrest warrant. Jacob v. Johnny, 18 FSM R. 226, 230 (Pon. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

Police officers have a qualified official immunity from civil liability when they arrest someone for whom they have a facially-valid arrest warrant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

The government must make a probable cause showing at a hearing before pretrial restraints on a 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. In re Anzures, 18 FSM R. 316, 320 n.7 (Kos. 2012).

Probable cause is a constitutional requirement for a warrant. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining "probable cause" is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

Generally, no arrest can be made without first obtaining a warrant therefor except when otherwise authorized by law. A warrantless arrest may be made when a criminal offense has been committed and a policeman has a reasonable ground to believe that the person to be arrested has committed it. Alexander v. Pohnpei, 18 FSM R. 392, 397 (Pon. 2012).

Under the common law rule in many jurisdictions, the police could arrest without a warrant persons who may have committed a felony but could not make a warrantless arrest for a misdemeanor unless it was committed in the arresting officer's presence. Alexander v. Pohnpei, 18 FSM R. 392, 397 (Pon. 2012).

The FSM Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. This protection prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

Merely entering a person's property is often not enough to violate a person's right to be secure in her house. For instance, if the police do not enter the home but wait for the occupant to emerge from the house before effecting an arrest, the right is not violated. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

When police officers did not have an arrest warrant, they would have violated a person's constitutional right if, when arresting her, they had entered her dwelling house or her shower house since that was part of her home even though it was a separate structure. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

A test for whether a particular area is constitutionally protected from unreasonable searches and seizures is whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Under this test, section five certainly protects a person's shower house area as the nature of its use is one in which there is a high expectation of privacy. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.5 (Pon. 2012).

When the officers told the plaintiff, while she was still in her shower house, that they were there to arrest her and once the officers told her that that was what they were there for, she was not free to leave except in their custody. In other words, the police arrested her while she was in her shower house even though they were outside. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

It is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home. When the plaintiff was arrested while she was in an area protected by Section five of the Declaration of Rights (her shower house) and when the police did not have a warrant, her arrest was illegal because the police needed a warrant to arrest her where they did and they did not have one. Alexander v. Pohnpei, 18 FSM R. 392, 398-99 (Pon. 2012).

When the police clearly told a person that she was being arrested, but she was not told the complaint's details or the cause for her arrest beyond that there was a complaint against her, that was not enough to tell her the complaint's substance, and, under the Loch standard, not enough to comply with the requirement that she be told the cause and authority of her arrest. Alexander v. Pohnpei, 18 FSM R. 392, 399-400 (Pon. 2012).

Although Pohnpei state law makes twenty-four hours under arrest without being released or being before a court competent to try the offender for the offense charged per se unreasonable, it does not automatically make times shorter than twenty-four hours reasonable. Whether a shorter time is reasonable or unreasonable depends on the facts of the case. Alexander v. Pohnpei, 18 FSM R. 392, 400 n.6 (Pon. 2012).

The signing of an advice of rights form, by itself, cannot retroactively validate the earlier failure to inform an arrestee of her rights. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

A special relationship creating a duty of care exists when a person is in police custody, but when an officer pursues but does not have any actual contact with the person pursued, that person was never seized or in custody. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

One should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. This standard comports with the statutory definition of arrest used in 12 F.S.M.C. 218. FSM v. Edward, 18 FSM R. 444, 449 & n.3 (Pon. 2012).

A person was not under arrest when he was told by the officers that they were informed that he might know something about a recent break-in and asked if he would be willing to go with them to the police station for questioning and he agreed but voluntarily entered the police vehicle and during the ride to the police station he sat with an officer in the back seat and was not handcuffed or otherwise restrained in any way. No arrest was made when he entered the police vehicle and was transported to the police station, as the break-in was still under investigation, as he was thought to know something about the break-in, and as the officer told him that he was not under arrest at that time, but that they wanted to know his story regarding the break-in. FSM v. Edward, 18 FSM R. 444, 449 (Pon. 2012).

In any case of arrest, it is unlawful to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released

will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

The arrest of a prisoner on work release was not unlawful when the police had an eyewitness report that he had violated his work release conditions. The eyewitness report was enough on which to base an arrest of a probationer for a release conditions violation. A later judicial proceeding would determine the report's accuracy or bias. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

When the most likely reason for the arrest and later court appearance of a prisoner on work release was not to charge him with a new crime but to revoke or modify his work release conditions, the rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest for violating work release conditions would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Chuuk therefore cannot be held civilly liable for the arrestee detention from September 8, 2010 to September 10, 2010, of a prisoner arrested for a work release violation. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 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).

When the defendant was found in the area after hours and his answers to the officer's questions were inconsistent, that and the surrounding circumstances rise to the level of reasonable suspicion, but not the higher standard of probable cause, which is needed for a lawful arrest. "Reasonable suspicion" is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity. FSM v. Benjamin, 19 FSM R. 342, 347 & n.5 (Pon. 2014).

"Arrest" is defined as "placing any person under any form of detention by legal authority." 12 F.S.M.C. 101(3). A person is considered arrested for the purpose of the right to be advised of his constitutional rights when his freedom is substantially restricted or controlled by a police officer who is exercising official authority based upon the officer's suspicion that the person may have been involved in the commission of a crime. FSM v. Benjamin, 19 FSM R. 342, 347 (Pon. 2014).

One should be considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime. FSM v. Benjamin, 19 FSM R. 342, 347 (Pon. 2014).

When there was no probable cause to arrest the defendant, placing the defendant into the police car and taking him to the Pohnpei state police station in Kolonia and then questioning him on the way to the national police headquarters in Palikir without reading him his rights, violates his rights to remain silent and to the assistance of counsel. FSM v. Benjamin, 19 FSM R. 342, 347-48 (Pon. 2014).

Having substantially restricted the defendant's freedom when he was placed in the police vehicle and transported first to the Pohnpei police station in Kolonia and then to the national police headquarters in Palikir, the defendant was under arrest and should have been read his rights. By not doing so, any statement made by him on questioning by the police in their vehicle on the way to the national police headquarters in Palikir and before being read his rights will be suppressed. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

A defendant must be advised of a full "panoply" of due process rights in addition to the right to remain silent and the right to counsel. These may be summarized as the right not to be denied access to counsel, family members, or other interested persons; the right to send a message, or other communications; the right to stop all questioning until such persons are present; the right to remain silent; and the right to be brought before a judge or released within a reasonable time. FSM v. Ezra, 19 FSM R. 497, 509 & n.4 (Pon. 2014).

Title 12 protects the right of a defendant to be informed, requiring that an arresting officer shall, at or before the time of the arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest. FSM v. Ezra, 19 FSM R. 497, 513 (Pon. 2014).

A person should be considered arrested when one's freedom of movement is substantially restricted or controlled by a police officer, or when the suspect is otherwise deprived of his freedom of action in any significant way. Thus an arrest can occur during a "custodial interrogation," even if the suspect never formally arrested. A custodial interrogation is one that is held in a police dominated atmosphere. The custody test is an objective test, determined in the totality of the circumstances and not based on the police officer's intention nor the subjective views harbored by the person being questioned. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause. Probable cause has been defined as a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

Police questioning alone does not trigger the right to be informed. The police have the right make brief detentions, and ask questions without making an arrest. This determination is based on the totality of the circumstances, guided by common sense. Thus, when a defendant was definitively informed as to the nature of the questions at the police station, even if an arrest subsequently occurred in a custodial environment, the explanation given at that time was sufficient to meet the due process requirement under 12 F.S.M.C. 214. FSM v. Ezra, 19 FSM R. 497, 516 (Pon. 2014).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he

had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The usual remedy for a person's failure to be informed of his rights is the suppression of any evidence against him that resulted from that failure. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

In effecting an arrest, a police officer may employ no more force than he reasonably believes to be necessary. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

– Assault and Battery

When one person, encouraged by the defendant to commit an assault, carries out the assault and then proceeds to commit robbery by the taking of turtle meat from the possession of the assaulted person, the defendant is not guilty of robbery where: 1) he did not suggest taking of the turtle meat or anything of value; 2) there is no showing that he could have foreseen the assault would be followed by the taking of something of value; and 3) the defendant left the premises before the turtle meat was taken. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. It is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a felony. FSM v. Boaz (I), 1 FSM R. 22, 24 n.* (Pon. 1981).

Under section 951 of the National Criminal Code the issue is not whether the defendant actually committed an assault or a battery, but whether he entered the house with the purpose of committing an assault. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 25-26 (Pon. 1981).

Because Congress defined a major crime under the National Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the Trust Territory Code are punishable by only six months' imprisonment, it is clear that the assault provisions of the Trust Territory Code are left intact. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

The crimes of assault, and assault and battery, undoubtedly are necessarily included within the charges of assault with a dangerous weapon and aggravated assault, because they all relate to the protection of the same interests and are so related that in the general nature of these crimes, though not necessarily invariably, proof of the lesser offense is necessarily presented as part of the showing of the commission of the greater offense. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

When the Yap Legislature has not demonstrated a positive intent to authorize conviction for two crimes, one of which requires proof of an additional fact, on the same facts, the trial court should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. Therefore a conviction for aggravated assault should be vacated when for the same act there is a conviction for assault with a dangerous weapon, which requires proof of an additional fact. Yinmed v. Yap, 8 FSM R. 95, 101 (Yap S. Ct. App. 1997).

When the defendant did not strike, beat, wound or otherwise cause bodily harm to the complainant, the state has failed to prove beyond a reasonable doubt that the defendant committed an assault and battery upon the complainant, and that charge must be dismissed. Kosrae v. Jonah, 10 FSM R. 270, 272 (Kos. S. Ct. Tr. 2001).

An assault and battery in Yap is when a person unlawfully strikes, beats, wounds or otherwise does bodily harm to another. Simple assault does not require proof of specific intent. Yow v. Yap, 11 FSM R. 63, 66 (Yap S. Ct. App. 2002).

An assault against a national public servant at the national government capitol complex in Palikir, in the middle of a workday, in the National Public Auditor's Office demonstrates precisely the national

government's interests that Congress sought to protect by defining a crime against a national public servant in the course of the public servant's employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Assault is defined as offering or attempting, with force or violence, to strike, beat, wound, or to do bodily harm to another. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

When the state has proven that the defendant also threatened the victim with a knife after the sexual assault, and told her not to tell anyone what had happened, the state has proven all the elements of the offense of assault beyond a reasonable doubt. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

The offense of assault and battery requires proof beyond a reasonable doubt of striking, beating, wounding, or otherwise doing bodily harm to another. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant held the victim down, placed his hand over her mouth, and prevented her escape from his attack upon her, and these actions resulted in bodily harm to the victim, the state has proved beyond a reasonable doubt all of the elements of the criminal offense of assault and battery. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The proof of the lesser offense of assault is necessarily included as part of the showing of the greater offense of assault and battery. Kosrae v. Kilafwakun, 13 FSM R. 333, 335 (Kos. S. Ct. Tr. 2005).

When the defendant presented only his testimony in support of his argument that under Kosraean custom, he may strike his sister-in-law and niece-in-law and when the defendant did not take any steps to separate the women during their argument, nor take any other actions to promote peace or resolve the argument, the court will conclude that the defendant's self-serving testimony does not satisfy the evidentiary requirement of Kosrae State Code § 6.303, which requires that the court receive satisfactory evidence of tradition before it may utilize tradition in reaching a decision. The court will decline to accept the defendant's argument that, based solely upon his status as a male relative, he is entitled to commit a battery upon a female relative, and his defense of customary authority must fail. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

When convictions are entered upon the two greater offenses of assault and battery, one count for each victim, the lesser included charges of assault, two counts, will be dismissed. Kosrae v. Kilafwakun, 13 FSM R. 333, 337 (Kos. S. Ct. Tr. 2005).

Under Pohnpei state law, both "felonious assault and battery," 61 Pon. C. § 5-133, and "assault and battery," 61 Pon. C. § 5-134, are felonies since they are punishable by a maximum term of imprisonment of ten years and two years respectively. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

If both the use-of-a-slingshot offense and assault-with-a-dangerous-weapon offense are proven with respect to the same act, the court will enter a conviction on only the greater offense of assault with a dangerous weapon. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

An assault is a lesser included offense of assault and battery. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

– Attempt

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

An attempt to commit a crime is a lesser included offense that merges with the greater ("target") offense if the attempt is successful. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

If the target crime is in fact committed, there can be no conviction for attempt, since the actor's prior conduct is deemed merged in the completed crime. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

– Bill of Particulars

A request for a more definite statement is actually a motion for a bill of particulars. A motion for a bill of particulars may be made before the initial appearance or within ten days after the initial appearance or at such later time as the court may permit. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

While the court must first look to FSM sources of law and circumstances in the FSM to establish legal requirements in criminal cases rather than begin with a review other courts' cases, the court may look to U.S. sources for guidance in interpreting FSM Criminal Procedure Rule 7(f) (bills of particulars) when the court has not previously construed that rule and it is identical or similar to the U.S. rule. FSM v. Sam, 14 FSM R. 398, 401 n.1 (Chk. 2006).

The purpose of the bill of particulars is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise. The test on passing on a motion for a bill of particulars should be whether it is necessary that the defendant have the particulars sought in order that prejudicial surprise be avoided. The sole question should be whether adequate notice of the charge has been given the defendant. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

A motion for a bill of particulars should make clear what relief the defendant is seeking, and should be worded definitely enough that if it is granted the court could enforce its order. A motion for a bill of particulars must be denied when the motion has failed to specify the particulars sought, or makes a catchall request for "particulars." FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

No bill of particulars is necessary if the government has provided the information needed in some other satisfactory form, such as when the government has adopted an "open file" discovery policy, giving the defendants the opportunity to inspect all relevant documentary and physical evidence. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

A motion for a bill of particulars will be denied when no grounds were given for the motion's tardiness, when the motion fails to specify the particulars sought, and when it appears that the government has provided the information through other means. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

If the information does not sufficiently inform the defendant of the charges against him, the defendant has the available remedy of filing for a bill of particulars pursuant to Chuuk Criminal Rule 7(e). The purpose of a bill of particulars is to inform the defendant sufficiently about the charge so he can prepare his defense and can avoid surprise. A bill of particulars is typically requested when the defendant is unable to determine from the information what the charges are against him. Chuuk v. Menisio, 15 FSM R. 276, 279 (Chk. S. Ct. Tr. 2007).

Under Rule 7(f), a motion for a bill of particulars may be made before the initial appearance or within ten days after arraignment or at such later time as the court may permit. Chuuk v. Menisio, 15 FSM R. 276, 279 n.2 (Chk. S. Ct. Tr. 2007).

A bill of particulars is not a matter of right. It rests within the trial court's sound discretion. The test on passing on a motion for a bill of particulars should be whether it is necessary that the defendant have the particulars sought in order that prejudicial surprise be avoided. The sole question should be whether adequate notice of the charge has been given the defendant. Chuuk v. Menisio, 15 FSM R. 276, 279-80 (Chk. S. Ct. Tr. 2007).

A motion for a bill of particulars should make clear what relief the defendant is seeking, and should be worded definitely enough that if it is granted the court could enforce its order. A motion for a bill of particulars must be denied when the motion has failed to specify the particulars sought, or makes a catchall request for "particulars." No bill of particulars is necessary if the government has provided the information needed in some other satisfactory form, such as when the government has adopted an "open file" discovery policy, giving the defendants the opportunity to inspect all relevant documentary and physical evidence. A motion for a bill of particulars will be denied, even if timely, when the motion fails to specify the particulars sought and when it appears that the government has provided the information through other means. Chuuk v. Menisio, 15 FSM R. 276, 280 (Chk. S. Ct. Tr. 2007).

The court can find no grounds for granting a motion for a bill of particulars when the government has set forth its charges against the defendant in compliance with Rule 7(c)(1); when it has complied with the defendant's discovery requests to the extent of offering full disclosure of its case file against him; when the defendant does not specifically identify any "particulars" being sought; and when the defendant has not, in any case, set forth any grounds demonstrating that the particulars sought are necessary to avoid prejudicial surprise. Chuuk v. Menisio, 15 FSM R. 276, 280 (Chk. S. Ct. Tr. 2007).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

– Bribery

Since the maximum penalty for bribery is five years' imprisonment, the general limitation period for bribery is thus three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

– Burglary

Where there is no question that the defendant entered a building, the relevant question under the FSM burglary statute is whether the defendant's entry was accompanied by the purpose to commit any felony, assault, or larceny therein. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 23-24 (Pon. 1981).

Under section 951 of the National Criminal Code the issue is not whether the defendant actually committed an assault or a battery, but whether he entered the house with the purpose of committing an assault. 11 F.S.M.C. 951(1). FSM v. Boaz (I), 1 FSM R. 22, 25-26 (Pon. 1981).

A privilege to enter one's cousin's house cannot be exercised by pounding on the walls of house at two a.m. until a hole for entry is created and shouting threats at the occupants. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

Since under Yap statutory law trespass is a lesser included offense of burglary, a trespass conviction will be vacated when there is a burglary conviction for the same act. Yinmed v. Yap, 8 FSM R. 95, 101-02 (Yap S. Ct. App. 1997).

The criminal offense of burglary is defined as entering by force, stealth or trickery, the dwelling place or building of another with the intent to commit a felony, larceny, assault, or assault and battery therein. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

When the state has not proven the element of entering by force, stealth or trickery, the state has not proven all elements of the offense of burglary beyond a reasonable doubt. The burglary charge will accordingly be dismissed. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

The offense of burglary requires proof beyond a reasonable doubt of entering by force, stealth or trickery, the dwelling place or building of another with the intent to commit a felony, larceny, assault, or assault and battery therein. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented that the defendant touched or felt the victim in any way so as to infer his intent to commit a sexual assault or other felony upon her and there was no other evidence presented that the defendant committed any other acts to support the intent to commit a sexual assault, larceny, assault, assault and battery, or other felony, the state did not prove beyond a reasonable doubt the criminal offense of burglary and therefore, the defendant must be acquitted of that offense. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

– Civil Rights Offenses

A person commits a crime if he or she willfully, whether or not acting under the color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Wainit v. FSM, 15 FSM R. 43, 45 n.1 (App. 2007).

The maximum sentence for violating 11 F.S.M.C. 701 was raised in the 2001 criminal code from three years to ten years. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

The trial court's imposition of a one year sentence of imprisonment for a violation of 11 F.S.M.C. 701 was not an abuse of discretion when there is nothing in the record which suggests that the sentence was anything but reasonable in light of the evidence presented to the court at the time of sentencing, and when, at the time of the defendant's conduct giving rise to his conviction, a violation of 11 F.S.M.C. 701 could result in a period of incarceration of up to 3 years. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

The phrase "whether or not acting under color of law" in the civil rights criminal statute plainly means that Congress, by enacting the statute, made it a crime for a private person to willfully deprive another of, or injure, oppress, threaten, or intimidate the other in the free exercise of his or her rights under the FSM Constitution or laws. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

"Color of law" means the appearance or semblance without the substance of legal right. "Color of law" usually implies a misuse of power made possible only because the wrongdoer is clothed with the authority of the state. In the context of civil rights statutes or criminal law "color of law" and "state action" are synonymous. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

A person "not acting under the color of law" is a private individual – not a person who is clothed with governmental authority. Title 11, subsection 701(1) makes certain conduct by purely private persons (as well as those clothed with governmental authority) a crime. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk.

2014).

The FSM always has standing to enforce its own criminal laws and to prosecute violators in order to protect the public against future harm and to punish wrongdoers for past harm. Criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of laws enacted by the FSM Congress, and this includes the criminal law and punishing civil rights violators. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

In addition to being potentially criminally liable to and subject to punishment by the FSM for the violation of 11 F.S.M.C. 701(1), a defendant could potentially also be civilly liable to the alleged victims in a suit under 11 F.S.M.C. 701(3). Three major differences exist between the criminal case and any potential civil case – in a civil case 1) the alleged victim(s) would be the plaintiff(s); 2) the burden of proof would be lower (preponderance of the evidence as opposed to beyond a reasonable doubt); and 3) the element of willfulness would not be required to establish civil liability. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

– Conspiracy

Evidence will not be stricken when most previously introduced evidence is unquestionably related to counts still before the court; when the description of the defendants' duties before and after July 12, 1981 did not vary significantly; when the auditor's activities uncovered illegal transactions both before and after July 12, 1981; when various Mobil employees' conversations before July 12, 1981 related to the existence of a pattern of conduct and planning and carrying out illegal transactions and are relevant about whether a conspiracy existed after July 12, 1981. FSM v. Jonas (II), 1 FSM R. 306, 310-12 (Pon. 1983).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. In re Extradition of Jano, 6 FSM R. 93, 107 (App. 1993).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense if he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

A conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

When it was unlawful and a national offense for any of the Uman Social Project funds to be spent on anything other than the construction of six new community halls on Uman, an agreement to do so would thus constitute the national offense of conspiracy. A single overt act committed by one of the co-conspirators before the end of the conspiracy is sufficient for there to be criminal liability for conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

Conspiracy to commit a crime is an offense separate and distinct from the crime that is the object of the conspiracy. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as

by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. There must be evidence of some participation or interest in the commission of the offense. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. When it is shown that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. FSM v. Este, 12 FSM R. 476, 483 (Chk. 2004).

A finding by the court that there is insufficient evidence to convict all but one of the parties alleged to have participated in a conspiracy ordinarily requires the discharge of the one remaining defendant. FSM v. Este, 12 FSM R. 476, 484 (Chk. 2004).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement and a conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. A single overt act committed by one of the co-conspirators before the conspiracy's end is enough for there to be criminal liability for conspiracy. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. There must be evidence of some participation or interest in the commission of the offense. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is regarded as a continuing offense, hence, the statutory period of limitation therefor begins to run from the time of the last provable overt act in furtherance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is punishable by imprisonment for not more than one-half the maximum sentence which is provided for the most serious offense which was the object of the conspiracy if the maximum is less than life imprisonment. When the most serious offense charged as an object of the conspiracy carries a maximum of twenty years' imprisonment, the conspiracy charge thus has a maximum sentence of ten years and therefore a limitations period of three years. FSM v. Kansou, 14 FSM R. 132, 134-35 (Chk. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

It is an affirmative defense that the defendant, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. 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).

Under the conspiracy law, the agreement to commit the crime need not be explicit and may be proven by circumstantial evidence. There is no requirement that there be even a written statement or speaking of words which expressly communicates the agreement. A mere tacit understanding between the parties is sufficient to show the agreement. Moses v. FSM, 14 FSM R. 341, 346 (App. 2006).

When, although no evidence was introduced which showed an explicit agreement, given the appellant's position as the Uman Social Project manager, the responsibilities that position entailed, the relationship he had with the Southern Namoneas Development Authority executive director, the misuse of national funds under appellant's and the director's direction and management, and by appellant himself, and the fact that no new community halls were built by appellant's and the director's project, there is sufficient evidence in the record for a reasonable trier of fact to find beyond a reasonable doubt that the appellant agreed with the director to commit theft. Moses v. FSM, 14 FSM R. 341, 346 (App. 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).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement and a conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. FSM v. Fritz, 14 FSM R. 548, 554-55 (Chk. 2007).

The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

The court may infer the existence of an agreement from circumstantial evidence and from the defendants' position and conduct. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

When there is sufficient evidence present from which the court may infer probable cause that an agreement existed and sufficient evidence of the requisite mens rea, there is sufficient evidence to establish probable cause that a conspiracy existed. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

For conspiracy two types of intent must be shown — the intent to agree and the intent to achieve the objective. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

Just as the intent to agree can be shown by circumstantial evidence that there was an agreement, the intent to achieve the objective can also be shown by a person's actions. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

A longer delay is tolerable for a complex conspiracy, than for an ordinary crime. FSM v. Kansou, 15 FSM R. 180, 184 (Chk. 2007).

Absent a strong showing of prejudice, co-conspirators are customarily tried together. This is not only

for reasons of judicial and prosecutorial economy and, in the FSM, public defender economy, but also to give the factfinder a fuller picture of the scheme, as well as to decrease the chance of inconsistent verdicts and allow witnesses to avoid the burden of having to testify at successive trials. FSM v. Kansou, 15 FSM R. 180, 186-87 (Chk. 2007).

Since, absent a strong showing of prejudice, co-conspirators are customarily tried together, when the movant has not made a strong showing and has not identified any defense he would raise but cannot because his case is joined with another, his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

A co-conspirator's criminal liability is not predicated on the last overt act that that co-conspirator committed, or even on whether that co-conspirator committed any overt act. It is based on an overt act having been taken by any co-conspirator. FSM v. Kansou, 15 FSM R. 481, 482 (Chk. 2008).

By claiming that he could not have committed any overt act in pursuance of the conspiracy after December 1999, a defendant appears to be asserting the defense of withdrawal from the conspiracy. That defense is very limited. It is an affirmative defense that the accused, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. When no evidence was ever presented, and the accused never asserted, that he made any effort, let alone a reasonable effort to prevent the conduct or result which was the object of the conspiracy, he cannot claim withdrawal or renunciation as a ground for dismissal. FSM v. Kansou, 15 FSM R. 481, 483 (Chk. 2008).

When co-conspirators had the opportunity to cease furthering the conspiracy by not submitting the accounts receivable for collection, as those debts were illegally incurred, but handed over those accounts to another with the understanding that the other was going to attempt collection from the government equates to an overt act done to further the goal of the conspiracy, namely the improper obligation and expenditure of national government funds. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

A letter can be an overt act because requesting the government to approve and pay a balance due that included charges involved in a conspiracy was an attempt to further the conspiracy, even though the co-conspirator was making the request in his official capacity as allottee. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

When two independent actions were both overt acts committed by a member, or members, of the conspiracy within the three years preceding the information's filing, the government filed its information within the applicable statute of limitations. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The conspiracy statute does not explicitly require the underlying offense to be a crime. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the offense's definition; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice,

and there need not be any written statement or even a speaking of words which expressly communicates the agreement. It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. When it is shown that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. Engichy v. FSM, 15 FSM R. 546, 558 (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).

A motion for a pretrial acquittal on conspiracy counts based on the government's failure to prove an agreement will be denied as premature because the existence of such an agreement is subject to proof at trial. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

A person commits the offense of conspiracy, if, with intent to promote or facilitate the commission of a national offense, he agrees with one or more persons that they, or one or more of them, will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

The agreement in a conspiracy does not have to be explicit. A mere tacit understanding will suffice, and there need not be any written statement or even a speaking of words which expressly communicates the agreement. It is not necessary to prove the specific terms or the specific scope of the conspiratorial agreement or to prove that the conspiracy's substantive object was accomplished. The existence of, and participation in, a criminal conspiracy may be proved by circumstantial as well as by direct evidence, if it affords a reasonable inference as to the ultimate facts sought to be proved. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

The trial court is allowed great discretion in the reception of circumstantial evidence, for a conspiracy must be proved by a number of indefinite acts, conditions, and circumstances varying with the purpose to be accomplished. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

When it is shown that the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, the trier of fact will be justified in concluding that they were engaged in a conspiracy to effect that object. Most conspiracy convictions are based on circumstantial evidence. Cholymay v. FSM, 17 FSM R. 11, 24 (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).

When the circumstantial evidence establishes that the defendants by their acts pursued the same

object, one performing one part and the other performing another part so as to complete the making of obligations in advance of availability of funds, obligating funds for other than their lawful purpose, and submitting fraudulent documents, the trier of fact was justified in concluding that the defendants were engaged in a conspiracy to achieve those objectives. Cholyamay v. FSM, 17 FSM R. 11, 24 (App. 2010).

An allegation that the defendants "did unlawfully conspire" to do some act is an allegation that there was an agreement since the word "conspire" means to join in secret agreement to do an unlawful or wrongful act or to use such means to accomplish a lawful end. By alleging that the defendants "conspired to" do something, the information alleges that the defendants joined in an agreement. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

If a person conspires to commit a number of offenses, he or she is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or continuous conspiratorial relationship, but the prosecution may seek to charge and prosecute all alleged conspiracies, and, if it proves more than one of the conspiracy counts, a guilty finding will be entered on only one of the counts. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

A solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Customarily, persons charged with conspiracy are tried together. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

A conspiracy exists when either the agreement or the means contemplated for its achievement are unlawful. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

The crime of conspiracy requires proof of specific intent, actual or implied, to violate law. Specific intent requires more than a mere general intent to engage in certain conduct or to do certain acts. The specific intent required for the crime of conspiracy is the intent to advance or further the unlawful object of the conspiracy. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

There is no such thing as liability without fault conspiracy. In order to be guilty of conspiring to commit an underlying strict liability offense, the defendant must have the specific intent to violate the underlying law. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

When the prosecution did not prove the accused had the specific intent to operate without a Kosrae Island Resource Management Authority permit and did not prove that he agreed with anyone or intended to agree with anyone to run his sea cucumber operation without a KIRMA permit, his conspiracy conviction must be reversed and that charge be dismissed. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

– Controlled Substances

The Trust Territory Controlled Substance Act is based on the United States Uniform Controlled Substance Act, therefore United States Cases construing the law are examined because it is presumed that the law adopted from the U.S. will be given the same construction in the FSM. Kallop v. FSM, 4 FSM R. 170, 174 (App. 1989).

Because the legislative intent in defining cannabis sativa L. in 11 F.S.M.C. 1112(14) was to embrace all species of marijuana, the government need not prove a defendant guilty of dealing in cannabis sativa L., but only in marijuana. Kallop v. FSM, 4 FSM R. 170, 174 (App. 1989).

A trial court may properly infer from the quantity of marijuana possessed that the requisite intent existed to support a conviction of trafficking. Kallop v. FSM, 4 FSM R. 170, 175-76 (App. 1989).

The offense of unauthorized consuming, possessing or giving of alcoholic drink requires proof of consuming or possessing alcoholic drink without being in actual possession of a valid drinking permit. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink is not inclusive of, or a lesser included offense of driving under the influence because the two offenses are committed with completely different actions and do not share even one common element. The offense of unauthorized consuming, possessing or giving of alcoholic drink does not require any involvement of a vehicle, whereas the offense of driving under the influence does not require possession of a alcoholic drink or non-possession of a valid drinking permit. Also, both offenses are classified as category one misdemeanors: neither offense is a classified as lesser than the other. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing, or giving of alcoholic drink requires proof of consuming or possessing alcoholic drink without attaining the age of twenty-one years. Kosrae v. Jonithan, 14 FSM R. 94, 96 (Kos. S. Ct. Tr. 2006).

The offense of drunken and disorderly conduct requires proof of being drunk and disorderly on any street, road, or other public place from the voluntary use of intoxicating liquor. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink, Kos. S.C. § 13.517(4), requires proof of consuming an alcoholic drink or possessing an open container of alcoholic drink in a public place. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

When it is undisputed that a public road is a public place and that the defendant was carrying and possessing an open beer can on the public road, the court can draw the inference from the facts in evidence that the open beer can possessed by the defendant on the public road was an open beer can containing beer, which is an alcoholic drink. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

Possessing an open container of alcoholic drink in a public place except when such place is closed to the general public for the purpose of conducting a private party, reception or social gathering and admission is by invitation or as otherwise provided by law can constitute the offense of unauthorized consuming, possessing or giving of alcoholic drink. The statute does not require the defendant to consume or intend to consume alcoholic drink from the open container to be guilty of the offense. Possession is sufficient.

Kosrae v. Tulensru, 14 FSM R. 115, 125 (Kos. S. Ct. Tr. 2006).

There was sufficient evidence apart from the field sobriety tests to sustain the conviction for driving under the influence because there were testimonies that the defendant appeared drunk and had the smell of alcohol on him, together with the fact that the defendant exhibited these characteristics when he emerged from his vehicle carrying an open can of Budweiser after going through a stop sign and colliding with another vehicle. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

A trier of fact is entitled to rely on properly admitted evidence and reasonable inferences drawn from that evidence. A reasonable inference is that the accused, who smelled of alcohol and had appeared to be intoxicated, would not have emerged from a vehicle immediately after an accident carrying an empty Budweiser can with him when he had this can in hand when he was on the road, which is a public place. Thus there was sufficient evidence to convict the defendant for possessing an open can of alcohol in a public place. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

– Cruel and Unusual Punishment

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

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

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

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

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

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM R. 179, 196-97 (Pon. 1991).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 199-200 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in

violation of the constitution. FSM v. Phillip, 5 FSM R. 298, 300 (Kos. 1992).

The FSM Constitution prohibits cruel and unusual punishment, but when a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

FSM cases addressing cruel and unusual punishment have consistently focused on claims made by prisoners. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

When the plaintiff's alleged injuries occurred in connection with his arrest, and not as a result of any subsequent sentence he may have received, the plaintiff, as a matter of law, could not have been subjected to cruel and unusual punishment. His cruel and unusual punishment claim will therefore be dismissed. Youp v. Pingelap, 9 FSM R. 215, 217-18 (Pon. 1999).

When there is no constitutional provision which specifies the type of food to be provided to inmates and no statutory or regulatory provisions which specify the type of food to be provided to inmates, there is no clear ministerial duty of the Chief of Police which states the type of food to be provided to inmates. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

In interpreting the provision against cruel and unusual punishment, a court considers the value and realities of Micronesia, against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

When it appears that the Chief of Police has attended to a prisoner's medical needs with respect to food preparation and the medical recommendation for low salt and low fat foods, there has been no refusal by the state to provide to the prisoner's medical needs. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

When a prisoner has not shown deliberate indifference to his medical needs by the state, there was no cruel and unusual punishment. Talley v. Timothy, 10 FSM R. 528, 531 (Kos. S. Ct. Tr. 2002).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

When the only food provided the plaintiff during the approximately 63½ hours in jail was three donuts and a jar of water given to him by a prisoner and he was permitted to use the restroom only once during that time, and was obliged to urinate through the window, and to defecate into the pages of a magazine which he then discarded through the window, these inhumane conditions of confinement constitute cruel and unusual punishment, in derogation of the Declaration of Rights of the FSM Constitution. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

A detainee's claim that while in jail she was denied food and water and access to her family is not a cruel and unusual punishment claim because no question of cruel and unusual punishment arises when a person has not been tried, convicted, and sentenced. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

When no evidence was introduced about what would constitute constitutionally acceptable jail conditions in the FSM and in Chuuk and since little evidence was introduced about the actual conditions when the plaintiff was there, there is insufficient evidence for the court to conclude that the general Chuuk jail conditions constituted cruel and unusual punishment for the convicted prisoners. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

When a prisoner was kept incarcerated in state jail after he has finished his maximum jail sentence and when state officials, after the matter was brought to their attention, showed deliberate indifference to his continued incarceration, the prisoner was subjected to cruel and unusual punishment in violation of the FSM Constitution. Kon v. Chuuk, 19 FSM R. 463, 465-66 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

– Defamation

The criminal offense of "defamation" is an offense against the person and not an offense against tradition. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting the offense are listed. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The complainant's right to bring a civil suit against the defendant for the tort of defamation is not impaired by the court's dismissal of the criminal defamation charges against her. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

When the evidence did not show it was the defendant's statements rather than another person's statements that resulted in "public hatred, contempt, or ridicule" of the victim and when there was no

evidence to show the stronger feelings or behaviors of hatred, contempt, or ridicule from others towards the victim, the insufficient evidence on these elements, alone, offers grounds to acquit the defendant of defamation. Kosrae v. Taulung, 14 FSM R. 578, 580 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 13.313 is unconstitutionally vague because it fails to provide a specific standard of criminal conduct and therefore does not give adequate notice of what type of speech is being regulated since a statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden and Kosrae State Code § 13.313 does not. Kosrae v. Taulung, 14 FSM R. 578, 580-81 (Kos. S. Ct. Tr. 2007).

Mean-spirited, accusatory words designed to harm another person, without regard to their truth or falsity are the kind of words that may result in a civil suit for the tort of defamation. However, the current criminal statute, Kosrae State Code § 13.313, may not be used to pursue a criminal prosecution for defamation because it does not clearly specify what types of speech are prohibited. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

– Defenses

A person, who was stunned at the time of the assault and was therefore unaware of his actions, cannot be held criminally liable for those actions. Nix v. Ehmes, 1 FSM R. 114, 125 (Pon. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

When no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. FSM v. Raitoun, 1 FSM R. 589, 591-92 (Truk 1984).

Statutes which provided a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203 whereunder possession of a firearm is permissible relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions whereunder possession of a firearm is permissible are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder

possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

If there are defenses, proof of which would not negate any essential element of the crime itself, it is constitutionally permissible to place some burden of proof for those defenses upon defendant. Runmar v. FSM, 3 FSM R. 308, 311 (App. 1988).

11 F.S.M.C. 107 does not create any presumption as to mental health or lack thereof but merely establishes the standard of proof for a defense based upon mental disease, disorder, or defect, and places the burden of persuasion for that defense upon the defendant. Runmar v. FSM, 3 FSM R. 308, 314 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. Runmar v. FSM, 3 FSM R. 308, 319 (App. 1988).

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).

Because Congress has neither adopted the de minimis defense found in the Model Penal Code nor any provision comparable to it that defense is not available in the FSM Supreme Court. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 179 (Pon. 1997).

A motion for judgment of acquittal on the ground the state had not sustained its burden of proof by proving all of the elements of the offense beyond a reasonable doubt because the state had not proven that police officer had "demanded" a driver's license from the defendant as required by statute, will be denied when the state proves that the officer did ask as by right for the defendant's driver's license. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a

remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM R. 424, 437 (Chk. 2003).

Under common law, a person may resist a lawful arrest if the arresting officer uses unreasonable force. After careful consideration of public policy and the constitutional protection of individual rights, including protection against arrests involving excessive force, the Kosrae State Court recognizes and accepts the application of the defense. A police officer has a right to use force reasonably necessary to effectuate an arrest. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the police officer had when he acted. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

When the defendant presented only his testimony in support of his argument that under Kosraean custom, he may strike his sister-in-law and niece-in-law and when the defendant did not take any steps to separate the women during their argument, nor take any other actions to promote peace or resolve the argument, the court will conclude that the defendant's self-serving testimony does not satisfy the evidentiary requirement of Kosrae State Code § 6.303, which requires that the court receive satisfactory evidence of tradition before it may utilize tradition in reaching a decision. The court will decline to accept the defendant's argument that, based solely upon his status as a male relative, he is entitled to commit a battery upon a female relative, and his defense of customary authority must fail. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. A proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

In the FSM, a person has no right to resist the execution of a search warrant by police or government agents even if the search warrant is later shown to be invalid. Consequently, a defendant may not assert as a defense that he has no liability and may resist a search warrant if he believes it is, or if it is, an invalid warrant. The law does not permit this. The search warrant's validity is irrelevant to the case and the court will refuse to hear testimony concerning it. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

Only ignorance or mistake of fact is a defense under 11 F.S.M.C. 301A(3). A mistake of, or ignorance of, law is not a defense under the FSM statute. Nor is it generally a defense to penal liability. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

A criminal defendant may not use mistake or ignorance of the law as a defense. He therefore may not use as a defense a mistaken belief that he had a legal right to resist a search warrant that he thought was invalid (even if it should later be shown to be invalid). FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Subsection 107(3) makes it a complete defense to a criminal charge that at the time of engaging in the wrongful conduct the defendant was legally incapable of committing a crime as defined in 11 F.S.M.C. 301A. Legal incapacity to commit a crime is often thought to include defenses such as insanity, mental incapacity, infancy, automatism, sometimes intoxication, and crimes where a certain status, not held by the defendant, is a necessary element of the offense. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

If a statute makes it an offense for a government employee to commit a certain act, a person who did not have the status of a government employee would be legally incapable of violating the statute. Usually this is analyzed as the inability to prove an element of the offense. FSM v. Wainit, 13 FSM R. 433, 447 n.8 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime — infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

A search warrant's invalidity, or a belief it is invalid, is not a defense to charges stemming from resistance to the search warrant's execution. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception which the court has not decided whether it is a viable defense, to resist a court-issued search warrant even if that search warrant turns out to be invalid. FSM v. Wainit, 13 FSM R. 433, 448 (Chk. 2005).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be drawn from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

When the government produced evidence that the defendant threatened eleven national police with the harm of loss of liberty — detention on Udot for an unspecified time — if they did not abandon their attempt

to search his Udot residence and when Section 517(1)(c)'s language, by its specific terms, applies to threats to any public official, not just to judges or politicians, a motion to acquit on the ground no evidence was introduced of threatening harm to a public official with purpose to influence him or her to violate his or her known legal duty will be denied. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

When the defendant's qualified immunity defense was not disclosed in his response to the government's Rule 16(b)(1)(C) discovery request and it should have been because it goes beyond a claim that the government failed to prove all elements of the offense and because it is not a claim that he acted legally based on the facts but that he is immune from criminal liability even if he did not act legally, this defense could be rejected on the ground of non-disclosure alone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A law enforcement officer is one whose duty is to preserve the peace. A mayor has the duty to faithfully implement the municipality's laws and ordinances, but he does not have the power of arrest, and even if he were a law enforcement officer, he would not be immune from prosecution because a law enforcement officer may be prosecuted for an offense committed while he was arresting someone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A belief that a search warrant is invalid is not a defense to a prosecution for resisting a search warrant, even if it is an invalid search warrant. If a defendant believed the national police's search warrant was invalid or had expired, his only lawful actions or remedies were to not interfere with the search and then to move to suppress any evidence seized in the search, or to institute a civil suit for damages, or both. FSM v. Wainit, 14 FSM R. 51, 55-56 (Chk. 2006).

Although the remedy of self-help or resistance to a search thought to be unlawful is barred, the court has not decided whether there are some unlawful searches, with or without warrant, the circumstances of which would be so provocative to a reasonable man that the seriousness of the offense of resistance ought to be mitigated as a result of such provocation, and when the defendant had the opportunity to put on such evidence at trial but no such showing (by a preponderance of the evidence), was made, the court did not need to decide whether such an exception could be permitted since the search warrant execution attempt was neither provocative nor was the force used unreasonable. FSM v. Wainit, 14 FSM R. 51, 59-60 (Chk. 2006).

A contention that the other driver involved in the accident should have been arrested, and not the defendant, is not a defense because the criminal case charges the defendant, and not the other driver, and it is within the state's prosecutorial discretion to choose who to charge. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 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).

A mistake of, or ignorance of, law is not a defense under the FSM statute. It is generally not a defense to penal liability. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

It is an affirmative defense that the defendant, under circumstances showing a complete and voluntary renunciation of his criminal intent, made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

While the ultimate burden of persuasion remains with the government, a defendant, asserting an affirmative defense, has some burden of proof or of going forward with sufficient evidence to raise the defense as an issue at trial. When custom is raised, it is usually more properly considered during

sentencing than at other stages of a criminal prosecution. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

A defendant's motion to dismiss on the ground of custom will be denied, but he will be free to present evidence at trial concerning his defense(s), if applicable. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

Even if a defendant was unaware that escape was unlawful, ignorance of the law is no excuse for unlawful behavior. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Three of the four 11 F.S.M.C. 1003 statutory exemptions for firearms possession are defenses within 11 F.S.M.C. 107 for which the accused has the burden of going forward with sufficient evidence to raise these exemptions as issues although the ultimate burden of persuasion still remains with the government. The prosecution does not have to make the initial showing but ultimately bears the burden of disproving the applicability of the exception when it is properly presented. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

A pretrial motion is generally capable of determination before trial if it involves questions of law rather than fact. A defense is thus capable of determination if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

As a general matter, the question of whether or not a particular defense may be raised by means of a Rule 12(b) motion turns on whether or not that defense may be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament, or for its historical value. All three of these requirements must be satisfied for this exemption to apply, and if any one of them is not met, this exception does not apply. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

When there is evidence before the court from which the court can infer that the handgun was serviceable – testimony of two officers that they had tried to and did get the firearm to work and from that evidence the court could infer that the handgun was capable of being fired or discharged; and when, from the circumstances under which the firearm was found and where it was found, abandoned by the accused in a mop bucket at Chuuk International Airport (right where he told the police he left it), the court could infer that he was not keeping the handgun as a curio, or as an ornament, or for its historical value but that his possession of the handgun must have been for some other reason. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

An accused's joblessness during the time period that the government was tardy in opposing his motion to dismiss, does not constitute prejudice in the legal sense since it did not adversely affect his legal position or his defense. FSM v. Itimaj, 20 FSM R. 232, 234 (Pon. 2015).

– Defenses – Duress

Subsection 301A(5) is a codified version of the common law defense of duress. Duress, under the FSM statute, occurs when A causes B to believe that B would suffer immediate, life-threatening injury unless B acts as ordered by A, and B acts and a crime is committed against C. Duress is a defense similar

to self-defense except that with self-defense the defendant's response is an attack on the threatening party, while the duress defense applies when the defendant saves himself by doing the threatener's bidding by harming another. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Duress is a pertinent theory of defense when a third party, that is, a person other than the victim, is the coercer. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Section 301A lists five instances where a person may be legally incapable of committing a crime — infancy; persons under another's legal conservatorship; persons whose conduct was the result of ignorance or mistake of fact, disproving criminal intent; persons who engaged in the wrongful conduct without being conscious; and persons whose actions were the result of life-threatening duress. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under the FSM statute, duress occurs when A causes B to believe that B would suffer immediate, life-threatening injury unless B acts as ordered by A, and B acts and a crime is committed against C. The duress defense is similar to self-defense except that with self-defense the defendant's response is an attack on the threatening party, while the duress defense applies when the defendant saves himself by doing the threatener's bidding by harming another. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

Asserting a duress defense at a pretrial stage in the proceedings and on the basis of the showing that another was armed and the defendants were assumed not to be armed does not entitle the movants to a dismissal at this point. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

– Defenses – Insanity

Mental condition defense established by 11 F.S.M.C. 302(1) is an affirmative defense and therefore places squarely upon the defendant the burden to establish "the facts which negative liability" by a "preponderance of the evidence." 11 F.S.M.C. 107(1)(b). Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, the affirmative defense of mental condition places the burden of proof upon the defendant to establish the facts which negative liability. The defendant must establish these facts by a preponderance of the evidence. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

The court may appoint an expert witness to assist both the state and the defendant in evaluating a criminal defendant's mental condition. Kosrae v. Charley, 13 FSM R. 214, 215 (Kos. S. Ct. Tr. 2005).

Under Kosrae State Code § 13.104(2)(d), when the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment should so state, which means when an acquittal based on this affirmative defense is made following a trial. Kosrae v. Charley, 14 FSM R. 470, 471-72 (Kos. S. Ct. Tr. 2006).

Because the need for the affirmative defense of insanity arises only if the state proves all elements,

including intent, beyond a reasonable doubt, the affirmative defense is not capable of determination without a trial. Therefore a pretrial motion to dismiss a prosecution on the ground that the defendant is insane will be denied as premature and a final determination on the affirmative defense will be deferred until trial. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 2006).

The affirmative defense of insanity is a different issue than the defendant's current capacity to understand the proceedings and participate in trial. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 2006).

A defendant is presumed competent, but when genuine and serious concerns about his mental condition have been raised, the court will order a hearing held to determine if, due to physical or mental disease, disorder, or defect, the defendant lacks the capacity to understand the proceedings against him or to assist in his own defense. Kosrae v. Charley, 14 FSM R. 470, 472 (Kos. S. Ct. Tr. 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).

No person who, as a result of physical or mental disease, disorder, or defect, lacks capacity to understand the proceedings against him or to assist in his own defense can be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures. The incapacity must be demonstrated in either of two ways: 1) by a showing that the defendant lacks the capacity to understand the proceedings against him, or 2) by a showing that the defendant is unable to assist in his own defense. Chuuk v. Pwechar, 15 FSM R. 256, 258 (Chk. S. Ct. Tr. 2007).

When the medical report does not present any evidence that the defendant lacks the capacity to understand the proceedings against him as the result of physical or mental incapacity, but rather states that he does understand the proceedings against him, and when the medical report does not present any evidence that the defendant lacks the capacity to assist in his own defense, the court will deny a motion to suspend trial due to the defendant's incapacity but will not preclude the submission of additional evidence at trial of the defendant's mental and physical capacity as it relates either to the requisite intent required to prove the charges against him or to his fitness to stand trial. Chuuk v. Pwechar, 15 FSM R. 256, 258 (Chk. S. Ct. Tr. 2007).

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

The statute requires that if a defendant is acquitted on the grounds of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment must so state. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

When an adjudication on the merits has not yet occurred and the case is still in the pretrial stage, a defendant's motion for acquittal on insanity grounds is premature and will be denied without prejudice since the FSM Code requires that, if a defendant is acquitted on the grounds of physical or mental disorder, the verdict and judgment must so state and since the court cannot issue a verdict and judgment until after a trial on the merits, during which the prosecution must prove beyond a reasonable doubt all elements including intent. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

If, at trial, the government proves all elements of an offense, including intent, beyond a reasonable doubt, the defendant is entitled to raise the issue of his mental condition as an affirmative defense. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

– Defenses – Intoxication

A contention that the defendant's voluntary intoxication absolves him of the legal consequences of his conduct by preventing him from forming the requisite intent to commit a crime is not a defense. The defendant, rather than the rest of the community should bear the risk of his own intoxication. FSM v. Boaz (I), 1 FSM R. 22, 27 (Pon. 1981).

Mere observation by a police officer of a person conducting himself in a manner generally associated with intoxication could be "reasonable grounds" for a cautious person to consider it more likely than not that the person has been consuming alcohol. This of course would depend upon the opportunity to observe actions and mannerisms usually associated with intoxication. Ludwig v. FSM, 2 FSM R. 27, 33 n.3 (App. 1985).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. Jonah v. FSM, 5 FSM R. 308, 312 (App. 1992).

Voluntary intoxication does not excuse a defendant from awareness of the risk of causing serious bodily injury to another through recklessly dangerous behavior. Machuo v. FSM, 6 FSM R. 40, 44 (App. 1993).

– Defenses – Selective Prosecution

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

An accused must raise the selective-prosecution claim at the pretrial motion stage. Defects in the institution of a prosecution, which is what a selective (or vindictive) prosecution would be, must be raised by motion before trial. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants do not claim that they were singled out for prosecution based upon their sex,

race, ancestry, national origin, or language, but assert that they are being arbitrarily prosecuted based upon their "social status," and when they do not clearly state what their social status is that is the basis of the prosecution's alleged invidious classification and discrimination, it cannot be their status as high government officials (congressmen or former congressmen) because that is the same status as one (ex-president) who was not prosecuted and who the defendants claim was similarly situated so they cannot have been prosecuted based on the membership in that "classification." Furthermore, the choice to prosecute someone because of his or her status as a high government official is not an invidious classification because of the deterrent effect of such prosecutions and because of such prosecutions' effect to maintain the public confidence that public officials are not above the law. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

When the defendants cannot identify an invidious classification (which they assert is their "social status"), they cannot make out that element of a selective prosecution claim, especially when the court has doubts whether the purported examples of persons similarly situated are actually that. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

To establish a claim of vindictive prosecution, the defendant must make an initial showing that charges of increased severity were filed because the accused exercised a statutory, procedural or constitutional right in circumstances that gave rise to an appearance of vindictiveness. FSM v. Fritz, 14 FSM R. 548, 554 (Chk. 2007).

When the court cannot say that the charges were of increased severity and were filed because a defendant exercised a statutory, procedural or constitutional right in circumstances that gave rise to an appearance of vindictiveness since probation revocation merits were never considered and since the charges the defendant was convicted of and for which revocation of probation was sought carried a higher maximum penalty than the conspiracy charge in this case, and since the other defendant was not faced with charges of increased severity since he was not previously accused of any offense for his conduct in September, 2004, the defendants' motions to dismiss based on selective or vindictive prosecution will be denied. FSM v. Fritz, 14 FSM R. 548, 554 (Chk. 2007).

A selective prosecution claim does not provide a basis for dismissal of the information because it is not a defense to the merits to the criminal charge itself, but an independent claim. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

Since selective prosecution is a defense in a criminal case, when a civil defendant asserts that it was singled out for enforcement and was the only employer being sued for unpaid health insurance premiums, the court will read this as an equal protection claim. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538-39 (Chk. 2011).

The elements of an equal protection claim of discriminatory or selective prosecution are: 1) other similarly situated persons who generally have not been prosecuted; 2) the defendant was intentionally or purposefully singled out for prosecution; and 3) the prosecution was based on an arbitrary or invidious classification. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted but has failed to, and he must show that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

A selective prosecution claim fails when the accused and the other persons who have not been prosecuted are not similarly situated, as when the accused, who was in charge of the operation and the

moving force behind it, was prosecuted and the lower level personnel were not. Just because they were all involved in the same overall enterprise does not necessarily make them similarly situated. Lee v. Kosrae, 20 FSM R. 160, 167-68 (App. 2015).

– Defenses – Self-Defense

The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. FSM v. Ruben, 1 FSM R. 34, 37 (Truk 1981).

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. FSM v. Ruben, 1 FSM R. 34, 38 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

Self-defense is not an affirmative defense. A defense is an affirmative defense only if it is so designated by the National Criminal Code or another statute. Engichy v. FSM, 1 FSM R. 532, 554 (App. 1984).

A police officer is entitled under 12 F.S.M.C. 215 to respond to physical resistance or attacks against him as he attempts to make an arrest and he may use whatever force is reasonably necessary to defend himself or others from harm. However, the police officer may not use more force than he reasonably believes to be necessary, either to effect arrest or to defend himself. Loch v. FSM, 1 FSM R. 566, 570 (App. 1984).

A person can use no more force than is reasonably necessary to protect himself, his family, home and property from an intruder, and to expel the intruder. Tosie v. FSM, 5 FSM R. 175, 177-78 (App. 1991).

Privilege to use reasonable force in defense of family, home and property may under the circumstances extend onto the road adjacent to the home. Tosie v. FSM, 5 FSM R. 175, 177 (App. 1991).

A claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. Alik v. Kosrae, 6 FSM R. 469, 472 (App. 1994).

There are two different standards used when reviewing a claim of self-defense. When one is threatened with imminent serious bodily harm or death by another he may justifiably use deadly force if necessary to protect himself from great bodily harm or death. When one is threatened with imminent unlawful bodily harm (but not serious bodily harm or death) he may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. Where there is no threat of deadly force the correct standard is that the unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force employed must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. Alik v. Kosrae, 6 FSM R. 469, 473 (App. 1994).

The defenses of provocation and self-defense are related. The standard for considering a claim of self-defense based upon provocation is that when one is threatened with imminent unlawful bodily harm, one may justifiably use nondeadly force if force is necessary to prevent the unlawful bodily harm. The unlawful force must at least constitute imminent threat of an assault before one may defend oneself by force. The force used must be reasonable in the light of the amount, degree and kind of force being used by the aggressor. Furthermore, a claim of self-defense is meritless when the only provocation is an insulting gesture and there is no imminent threat of bodily harm. Kosrae v. Kilafwakun, 13 FSM R. 333, 336 (Kos. S. Ct. Tr. 2005).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. This can be broken down into five separate elements which the government must prove beyond a reasonable doubt: 1) the defendant, 2) unlawfully caused, 3) the death, 4) of another human being, 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. With respect to the second element, whether a defendant's "unlawfully caused" the victim's death, the defendant's acts in self-defense render their actions lawful or excusable. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

Self-defense is not an affirmative defense and the burden of proof remains with the prosecution to prove each element of the offense when self-defense is asserted. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

The general rule is that a person can use no more force than is necessary to protect himself, his family, and his home and property from an intruder and to expel the intruder. The force employed in self-defense must therefore be reasonable in the light of the amount, degree and kind of force being used by the aggressor. A claim of self-defense is meritless when there is no imminent threat of bodily harm. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

In assessing a claim of self-defense involving use of a dangerous weapon, the court must also consider the extent to which use of a dangerous weapon is justified by circumstances. There is no automatic prohibition against use of a dangerous weapon to protect oneself in self-defense, even against an aggressor without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. Such use, however, substantially increases the likelihood that the harm to an aggressor will be greater than it would have otherwise been without a dangerous weapon, which in turn increases the likelihood that the court will find the force used was unreasonably severe. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants' acts were in self-defense, but they employed unreasonable force, there is no compulsory reduction of a murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants killed the victim while in a state of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse, the court will find them guilty of, at most, manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

When, well after defendants subdued the victim and rendered him defenseless, they continued to beat him, use of force against the victim by a defendant claiming self-defense was not reasonably necessary for his self-defense because he did not face an imminent threat of serious bodily injury or death from the victim when the victim was killed. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When evidence of self-defense has been presented, the court must determine whether the circumstances surrounding the self-defense claim were sufficient to show that the defendant was provoked, with reasonable explanation or excuse, to commit the killing under a state of extreme emotional or mental distress. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

If the attack on one defendant provoked his brother, with reasonable explanation or excuse, to use

force against the victim, and if either defendant killed the victim while in a state of extreme emotional or mental disturbance due to sufficient provocation, the murder charge against him must be reduced to manslaughter. The provocation must also have existed up until the time the victim was killed and the defendants did not have an opportunity to cool off. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

An accused's self-defense claim is a factual defense substantially founded upon and intertwined with evidence about the alleged offenses that requires trial of the general issue of the accused's guilt or innocence and that cannot be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 226 (Chk. 2012).

– Depositions

The burden of showing whether exceptional circumstances exist within the meaning of FSM Criminal Rule 15 is upon the defendant. To obtain a court order for taking of a deposition, the defendant must show that the witness is unavailable to attend the trial, that the testimony of the witness would be material and that such testimony would be in the interest of justice. Wolfe v. FSM, 2 FSM R. 115, 122 (App. 1985).

There are three elements a party in a criminal case seeking to take a deposition must satisfy – 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. The movant has the burden of showing whether exceptional circumstances exist. What must be shown is that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

Rule 15 allows a party, in exceptional circumstances, to depose his own material witness to preserve testimony for trial. It is not, however, a method of pretrial discovery. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

An accused has a constitutional right to be confronted with the witnesses against him. Both the Constitution and the criminal rules contemplate trial by live testimony, not by deposition. This is in part because of the desirability of having the factfinder observe the witnesses' demeanor. Exceptional circumstances are thus required for depositions in criminal cases. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

Rule 15 only allows depositions to be taken to preserve testimony for use at trial. It does not permit a witness who is available to attend trial to be deposed beforehand. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

Rule 15 does not allow a deposition to be taken to discover evidence to be used solely to support a defendant's allegations in one of his pretrial motions on a collateral matter concerning matters that occurred within the Department of Justice after the date the offenses charged occurred. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

A criminal defendant may depose his own witness, even an adverse or hostile witness, in the interests of justice if exceptional circumstances exist. Exceptional circumstances may exist when the potential witness would be unavailable for trial. Unavailability for trial is defined by FSM Evidence Rule 804(a). FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Merely being resident in a foreign country does not necessarily mean the witness is unavailable, but when the travel expenses are burdensome or when the witness unwilling to return for trial testimony, a possibility that may be more likely when he is an adverse, or even hostile, witness, a foreign resident may be considered unavailable and a deposition warranted. FSM v. Wainit, 13 FSM R. 301, 305-06 (Chk. 2005).

When a defendant has made no showing how a witness's testimony would be beneficial to him, but, it is a short time before the witness departs the FSM, and when the defendant has made a minimal showing it may be in the interests of justice and thus managed to meet his burden to show exceptional circumstances, the witness can be deposed although technically the witness might not be unavailable until he has actually left the FSM. The deposition should be limited to trial testimony and not to be used for discovery, or for collateral matters, or for matters that could not be considered trial testimony. FSM v. Wainit, 13 FSM R. 301, 306 (Chk. 2005).

Rule 15 permits the court to authorize a deposition in a criminal case when exceptional circumstances exist. It only allows depositions to be taken to preserve testimony for use at trial. It does not permit a witness who is available to attend trial to be deposed beforehand. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

There are three elements a party in a criminal case seeking to take a deposition must satisfy 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. The movant has the burden of showing whether "exceptional circumstances" exist, and what must be shown is that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

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An exceptional circumstances analysis must be conducted in order to establish whether a Rule 15 deposition is appropriate. The analysis must include whether 1) the witness is unavailable to testify at trial; 2) injustice will result because testimony material to the movant's case will be absent; and 3) countervailing factors render taking the deposition unjust to the nonmoving party. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

A witness that is currently beyond the Chuuk state court's subpoena powers combined with her unwillingness to return to Chuuk is unavailable under the meaning of Chuuk Criminal Procedure Rule 15.

Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

When the alleged incidents occurred in a room in the presence of both defendants and the witness and the events that transpired within the room can be verified by the room's occupants and the witness's testimony is the plaintiff's crux for the case against the defendants because the plaintiff expects the witness's testimony to refute the defendants' account of the occurrences, the witness's testimony is material to the plaintiff. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

There are no countervailing factors when the defendants have not opposed the prosecution's request for a deposition and there is no evidence, on the record, indicating that any countervailing factors exist that would render the taking of the witness's deposition unjust. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

Rule 15 depositions require a request by the party who is planning to call the prospective witness or a detained witness's request. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

When the government points out that the witness, as the alleged victim in the case, is necessarily a witness for the prosecution, and her deposition is necessary to make a case; when the government made the request under Rule 15; when there have been no objections to the depositions; when the government and the witness presented exceptional circumstances since the witness was both unable and unwilling to return to Chuuk due to her concerns regarding her safety and well being in Chuuk; and when the witness is therefore "unavailable," the necessary Rule 15 factors have been met as required and the court will grant the request for the deposition. Chuuk v. Emilio, 19 FSM R. 33, 37 (Chk. S. Ct. Tr. 2013).

A party in a criminal case seeking to take a deposition must satisfy three elements – 1) there must be exceptional circumstances, 2) it must be in the interest of justice, and 3) it must be the party's own prospective witness whose testimony is to be preserved for use at trial. FSM v. Tippingeni, 19 FSM R. 439, 448 (Chk. 2014).

To obtain a court order for taking of a deposition, the movant must show that the witness is unavailable to attend the trial, that the witness's testimony would be material, and that such testimony would be for the moving party's benefit or in some other way in the interest of justice. The movant bears the burden of showing whether exceptional circumstances exist within the meaning of FSM Criminal Rule 15. FSM v. Tippingeni, 19 FSM R. 439, 448 (Chk. 2014).

When the witnesses are apparently willing to testify for the prosecution but are all unavailable because they are all on Guam beyond the reach of the court's subpoena power and are all serving sentences of either incarceration or probation that prevent them from leaving Guam and one is incarcerated and serving a life sentence, this constitutes exceptional circumstances for taking a deposition. FSM v. Tippingeni, 19 FSM R. 439, 448 (Chk. 2014).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the court has not previously interpreted certain aspects of an FSM criminal procedure rule regarding deposition, which is drawn from and identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. FSM v. Tippingeni, 19 FSM R. 439, 448 n.2 (Chk. 2014).

Although the alleged victims are unavailable since they are all outside the FSM and cannot be subpoenaed and are generally unwilling to travel to Chuuk to testify because of the events' notoriety and shame and because of concerns over their safety but their evidence is obviously material and it is in the interest of justice that it be preserved for trial, and while fear of testifying at trial may be a ground for finding exceptional circumstances, the court cannot rely on that point when insufficient evidence was provided to show that any particular victim-witness feared testifying at trial in Chuuk. Nevertheless, the victim-witnesses are beyond the reach of the court's subpoena power and cannot be compelled to come to Chuuk and the parties must travel to Guam to take other depositions, so exceptional circumstances exist

and they be deposed as well. FSM v. Tipingeni, 19 FSM R. 439, 448 (Chk. 2014).

While some of the prosecution witnesses may, in fact, be both willing and able to travel to Chuuk to appear in court, the court will still permit them to be deposed in Guam along with the other prosecution witnesses because exceptional circumstances exist to justify their depositions — they could change their minds; they are beyond the reach of the court's subpoena power; and the parties must travel to Guam to take other depositions since their evidence is material and it is in the interests of justice that their testimony be preserved for trial. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

Rule 15 has elaborate provisions to make it possible for the defendant and his attorney to be present at the taking of a deposition. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The prosecution may use Rule 15 to depose its witnesses because the FSM's Confrontation Clause does not always require a physical confrontation before the fact-finder, but the justification for using a deposition at a criminal trial as evidence against a defendant is much stronger if defendant has been present or if he or she has waived the right to be present. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

When the government conducts a Rule 15 deposition in a foreign land with a view toward introducing it at trial, the Confrontation Clause requires, at a minimum, that the government undertake diligent efforts to secure the defendant's presence. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

Whenever a deposition is taken at the instance of the government the court may direct that the that the FSM tender the defendant and his counsel with round-trip air transportation and with per diem for their anticipated stay at the deposition site and the cost of the deposition's transcript must also be paid by the government. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

A defendant's failure, absent good cause shown, to appear at the deposition of a government witness after notice and the government's tender of expenses constitutes a waiver of that right and of any objection to the taking and use of the deposition based upon that right. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

If, for whatever reason, a defendant does not wish to or is unable to attend the depositions of prosecution witnesses but does not want to waive his right of confrontation, the prosecution must arrange for his use of two telephone connections to the depositions, one to monitor the proceedings and the other a private line connected to his defense counsel so that he may confer with counsel when needed. The open line for the defendant to monitor the proceedings may be, but is not required to be, a video transmission line such as Skype. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

– Discovery

Normally the trial court fashions 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).

It is normally for the trial court to fashion 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).

Where defendants have no constitutional right to the discovery sought, an untimely motion to compel discovery will be denied. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 (Pon. 1995).

The prosecution has an ongoing obligation to supply to defendants any and all unprivileged evidence of an exculpatory nature. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 n.4 (Pon. 1995).

The government has no affirmative obligation to provide the defendant with information concerning misdemeanor offenses committed by its potential witnesses. FSM v. Cheida, 7 FSM R. 633, 641 (Chk. 1996).

A subpoena duces tecum is not unreasonable and oppressive when it requires documents that were earlier produced in response to discovery and materials and documents not discoverable under Criminal Rule 16 because it is not a valid objection that documents required by the subpoenas are not discoverable under Rule 16, but any materials already furnished in discovery need not be produced pursuant to the subpoenas. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A preliminary hearing is not a defendant's discovery tool. The preliminary hearing's purpose is to establish probable cause for detaining or requiring bail for an accused, not to create a discovery opportunity for the defendant (although some discovery may usually be a by-product of the hearing). The Criminal Procedure Rules provide other discovery methods for a defendant's use. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

The government can request discovery of a defendant in a criminal case in only three limited instances. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

The government can ask the nature of any defense which a criminal defendant intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

If, and only if, the defendant has already requested discovery under Rule 16(a)(1)(C) or (D), then the government can ask to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the defendant's possession, custody or control and which the defendant intends to introduce as evidence in chief at the trial, and it can also ask discovery of reports of scientific tests or experiments done which the defendant intends to introduce as evidence in chief at trial or which a witness the defendant intends to call will testify about. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

All the evidence that the government is entitled to request discovery of, is evidence that the defendant intends to introduce at trial. FSM v. Wainit, 11 FSM R. 1, 9 (Chk. 2002).

The government's right to discovery is, in part, limited due to constitutional concerns about an accused's right to protection against self-incrimination. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

One reason for limiting the government's right to discovery is the many other means the government has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM R. 1, 10

(Chk. 2002).

If, before or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection, or discovers additional witnesses or defenses, that party must promptly notify the other party or that other party's attorney or the court of its existence. FSM v. Wainit, 11 FSM R. 186, 189 (Chk. 2002).

The rules contemplate that additional evidence and material might be discovered after the initial disclosure and prior to or even during trial that will need to be disclosed before being used at trial. The rules do not prohibit either side from finding more evidence for use at trial. Such late disclosure may be necessary for the just determination of a criminal proceeding. FSM v. Wainit, 11 FSM R. 186, 189-90 (Chk. 2002).

While it is understandable that the government may not want to include someone as a witness until it has had the chance to interview that person to see what their testimony might be, this does not override Rule 16(c)'s prompt notification requirement. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

If the government feels that disclosing material to a defendant would jeopardize other pending investigations before they were completed, it can comply with Rule 16(c)'s prompt disclosure requirement and address its legitimate concerns over a pending investigation's confidentiality by notifying the court. Such a notification would be by a written ex parte motion for a protective order to be viewed by the judge alone in camera. The movant's burden would be to make a sufficient showing that a protective order is needed. FSM v. Wainit, 11 FSM R. 186, 190 & n.1 (Chk. 2002).

When rather than seek a protective order, the government has deliberately chosen not to disclose the material to the defendant (and to the court) until it felt that its other investigation would not be jeopardized, some sanction must be imposed in such circumstances. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

When it has been brought to the court's attention that a party has failed to comply with Rule 16, the court may order that party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

The preferred remedy when the government makes a late disclosure of evidence is to offer the defendant a continuance to prepare to meet the additional evidence. FSM v. Wainit, 11 FSM R. 186, 190 (Chk. 2002).

A court should impose the least severe sanction that will accomplish the desired result of prompt and full compliance with the court's discovery orders and Rule 16(c). In exercising its discretion to fashion the appropriate remedy, the court should take into account the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances. These factors must be weighed even where there is a clear discovery order. FSM v. Wainit, 11 FSM R. 186, 190-91 (Chk. 2002).

It can be an abuse of discretion to exclude evidence, instead of granting continuance, when the late disclosure of evidence was inadvertent. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Less drastic remedies, such as a continuance are proper instead of suppression when the government's discovery violations are not in bad faith. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Even when the government has not acted in bad faith, and although a continuance may normally be the most desirable remedy, a court may still properly suppress late-disclosed evidence for prophylactic purposes. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Late-disclosed evidence may be suppressed for use in the government's case-in-chief, but allowed for

use in rebuttal. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

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).

The government may file under seal an ex parte document, for the court to view in camera, explaining which discovery entries should be redacted and for what reasons. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

If the government feels that disclosing certain material to the defendants would jeopardize other pending investigations before they were completed it can comply with Rule 16(c)'s prompt disclosure requirement and address its legitimate concerns over the confidentiality of pending investigation(s) by notifying the court. Such a notification can be by a written ex parte motion for a protective order to be viewed by the judge alone in camera. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. FSM v. Kansou, 13 FSM R. 167, 169 (Chk. 2005).

When the prosecution has voluntarily undertaken to provide witness statements in advance of trial by not objecting to the defendant's discovery request for them and by the then prosecutor turning over all of the witness statements he had then, the defense should not be expected or required to make a motion at the end of each prosecution witness's direct testimony for the production of a statement it had every reason to believe it already had. The defense's failure to move for the witness's prior statement after each had testified on direct is therefore excused. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

Rule 26.2 does not restrict its command to the production of statements in the hands of, or known to, the particular prosecuting attorney assigned to the case. Its order is unqualified. It applies to any witness statement in the government's hands. FSM v. Walter, 13 FSM R. 264, 268 n.2 (Chk. 2005).

Pursuant to the parties' continuing duty to disclose evidence or material previously requested or ordered, once the prosecution has volunteered to provide witness statements before trial, it should have provided the Chuukese language witness statements versions as well. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

When the prosecution has volunteered to provide prior witness statements before trial, a mistrial will be declared if the prosecution's failure to provide the Chuukese language witness statements before trial prejudiced the defendant. The failure to produce prior witness statements is analyzed under a strict harmless error standard. Since courts cannot speculate whether the statement of the witness could have been utilized effectively at trial, the harmless error doctrine must be strictly applied in these cases. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The proper standard in negligent nondisclosure cases should call for a new trial whenever the nondisclosed evidence might reasonably have affected the factfinder's judgment on some material point, without necessarily requiring a supplementary finding that it would also have changed its verdict. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The purpose of production of witness statements is to give defendants impeachment materials at a time when they can effectively use them. When the prosecution has failed to timely provide the statements, that objective can be fulfilled by the grant of a mistrial because when the denial of an opportunity to impeach a prosecution witness's highly damaging testimony is caused by the breach of the prosecutor's duty to produce the witness's prior statement, a new trial is necessitated. FSM v. Walter, 13

FSM R. 264, 268 (Chk. 2005).

If a witness's prior statement surfaces during the prosecution's case-in-chief, reopening the witness's testimony in the case-in-chief and permitting further cross-examination of the prosecution witness might be an appropriate remedy. FSM v. Walter, 13 FSM R. 264, 269 (Chk. 2005).

To the extent any witness statement contains exculpatory material, the prosecution has an ongoing obligation to supply the defendant any and all unprivileged evidence of an exculpatory nature. Such exculpatory information includes material that bears on the credibility of a significant witness in the case since a witness's prior inconsistent statement bears on his credibility. FSM v. Walter, 13 FSM R. 264, 269 (Chk. 2005).

Rule 15 allows a party, in exceptional circumstances, to depose his own material witness to preserve testimony for trial. It is not, however, a method of pretrial discovery. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

Criminal Rule 16(b)(1)(C) provides that the defendant, on the government's request, shall state the nature of any defense which he intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. When the government has properly made such a request and the defendant has not responded and his failure to comply 16 has been brought to the court's attention, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. FSM v. Wainit, 13 FSM R. 433, 443-44 (Chk. 2005).

Rule 16(a) provides that if the defendant requests disclosure of evidence from the state, then following such disclosure by the state, the defendant upon the state's request, must comply with the state's request for disclosure. Rule 16(b)(1) specifies the type of disclosures which may be requested by the state, and then be provided by the defendant. The government can ask, and the defendant must provide, the nature of any defense which a criminal defendant intends to use at trial and the name and address of any person whom he intends to call in support thereof. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

If additional evidence that has been requested, or witnesses, or defenses, which are subject to discovery, are discovered before or during trial, that party must promptly notify the other party, its counsel or the court of its existence. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

Pursuant to Kosrae General Court Order 2005-2, responses to request for discovery pursuant to sections (a) and (b) of Rule 16 must be served upon the requesting party within ten days of service of the request for discovery. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When it has been brought to the court's attention that a party has failed to comply with Rule 16, the court may order that party to permit the discovery, permit a continuance, prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When the state's reciprocal request for discovery was filed in January 2005, ten months prior to trial and GCO 2005-2, which specified the ten day response period, was adopted in July 2005 and effective immediately, but the state waited until the trial date, in October 2005, to inform the court of the defendant's non-compliance with Rule 16, the state's report was untimely and trial was held. Kosrae v. Phillip, 14 FSM R. 42, 49 (Kos. S. Ct. Tr. 2006).

When the defendant's qualified immunity defense was not disclosed in his response to the

government's Rule 16(b)(1)(C) discovery request and it should have been because it goes beyond a claim that the government failed to prove all elements of the offense and because it is not a claim that he acted legally based on the facts but that he is immune from criminal liability even if he did not act legally, this defense could be rejected on the ground of non-disclosure alone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

The court has always considered the government's "open file" discovery system to be a commendable and salutary practice. FSM v. Sam, 14 FSM R. 398, 402 (Chk. 2006).

While neither discovery requests nor responses under Criminal Rule 16 should be filed with the court except to the extent necessary to enable the court to perform its regulatory role under Rule 16(d), the mere filing of discovery disclosures does not result in the admission as evidence of the documents filed. In order to be admitted as evidence, the plaintiff will have to introduce each document during trial in conformance with the Rules of Evidence. Thus, the plaintiff's filing of its disclosures does not result in any prejudice to the defendant and his motion to strike the discovery filings will be denied. FSM v. Louis, 15 FSM R. 206, 208 (Pon. 2007).

It is normally for the trial court to fashion 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. FSM v. Killion, 15 FSM R. 235, 236 (Chk. 2007).

When the defendant has not shown any substantial hardship or prejudice due to the untimely discovery disclosure because, if the defendant's motion to compel had not been responded to, he would have expected the court to order the discovery disclosure to be made by a date certain, but instead, the prosecution responded by making the appropriate disclosures, and when the court concluded that the prosecution's presentation at argument showed excusable neglect and that its prompt disclosure once its neglect had come to its attention showed good faith, the court accordingly granted the prosecution's oral motion to enlarge time for excusable neglect and denied the defendant's motion to dismiss. Nor will the disclosed evidence be excluded as sanction since its untimely disclosure was not deliberate. Therefore the alternative motion to exclude the discovery disclosures from trial will also be denied. FSM v. Killion, 15 FSM R. 235, 237 (Chk. 2007).

When e-mails between a former prosecutor, an attorney member of the prosecution for the purpose of the motion, and the FSM Department of Justice involved trial preparation, strategy, and locating and discussing relevant evidence among the 20,000 pages produced in discovery, it is all attorney work, and, as such, it constitutes internal workings of the Attorney General's Office, that is, it is attorney work product. Attorney work product, including attorney work product by prosecutors in a criminal case, is privileged and not discoverable. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

Generally, the government can be required to disclose discovery material held by government agencies other than the prosecutors. The duty to search for discoverable material particularly applies if the defendant has made an explicit request that certain files in be searched. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

The government's obligation to provide to an accused discoverable material that it would have to disclose if it were in the hands of an FSM government agency does not extend to material not in its possession, but in a foreign government's possession. Unless the material requested is currently in the FSM government's possession, the government is not required to obtain and disclose to the accused any statements made by him to the FBI, U.S. Marshals, and U.S. court personnel during any interview, custodial detention, or meeting. Thus a motion to compel production of the materials in the United States's possession will be denied, but if any such statements are in the FSM's hands, the prosecution must produce them. FSM v. Kansou, 15 FSM R. 373, 377 (Chk. 2007).

When the grounds for a motion to suppress and redact were that the government did not respond to

discovery before the court-imposed deadline set in its scheduling order and the accused does not argue that the government's delays have been in bad faith, the motion will be denied because less drastic remedies, such as a continuance are proper instead of suppression since the government's discovery violations are not in bad faith. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

When the court cannot determine from its record whether the government complied with the accused's discovery request, an appropriate motion, if the government failed to timely respond to a discovery request, would be to move to compel answers to discovery under Chuuk Criminal Rule 16(d)(2), which sets forth the remedies for a party's failure to answer discovery requests. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

Rule 12(b)(3) must be construed with Rule 12(d)(2), which provides a mechanism for a defendant to determine which evidence the prosecution intends to use at trial. Once the prosecution identifies what evidence it intends to use at trial, then suppression may be sought by pre-trial motion. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

When there is no indication that the government intends to produce at trial the evidence sought to be suppressed, and until the government specifies that it intends to produce that evidence at trial, a motion to suppress that evidence is premature. The procedures set forth in Rules 12 and 16 need, as appropriate, to be followed before the court can reasonably address such issues. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

Criminal Rule 16(b)(1)(C) provides that the defendant, on the government's request, must state the nature of any defense that he intends to use at trial and the name and address of any person whom the defendant intends to call in support thereof. If, before or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection, or discovers additional witnesses or defenses, that party must promptly notify the other party or that other party's attorney or the court of its existence. Chuuk v. Rotenis, 16 FSM R. 565, 566 (Chk. S. Ct. Tr. 2009).

When the government has properly made a Criminal Rule 16(b)(1)(C) request and the defendant has not responded and failure to comply has been brought to the court's attention, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. Chuuk v. Rotenis, 16 FSM R. 565, 566-67 (Chk. S. Ct. Tr. 2009).

When faced with a discovery violation, the court should impose the least severe sanction that will accomplish the desired result of prompt and full compliance with the court's discovery orders and Rule 16(c). In exercising its discretion to fashion an appropriate remedy, the court should take into account the reasons why disclosure was not made, the extent of the prejudice, if any, to the opposing party, the feasibility of rectifying the prejudice by a continuance, and any other relevant circumstances. These factors must be weighed even when there is a clear discovery order. Chuuk v. Rotenis, 16 FSM R. 565, 567 (Chk. S. Ct. Tr. 2009).

When the court is not convinced that defense counsels took adequate steps to ensure prompt disclosure of their witnesses and when, because a continuance has been granted, prejudice to the government in preparing for the belatedly-disclosed defense witnesses is to some degree alleviated, the government will be allowed to reopen its case-in-chief to call additional witnesses if it wishes, and, if the government intends to re-open its case-in-chief and call additional witnesses in light of defendants' late disclosures of their witnesses, it must file a notice that complies with Criminal Rule 16(a)(1)(E). Chuuk v. Rotenis, 16 FSM R. 565, 567 (Chk. S. Ct. Tr. 2009).

The prosecution is under a continuing duty to produce documents requested if any come to light, and is also under a continuing constitutional duty to disclose all exculpatory material that it has or may later obtain. FSM v. Suzuki, 17 FSM R. 70, 75 (Chk. 2010).

Prosecutors are constitutionally required to provide criminal defendants with any and all exculpatory evidence they have regardless of whether the defendant has made a discovery request. This is a continuing obligation which does not cease at any deadline. FSM v. Kool, 18 FSM R. 291, 293-94 (Chk. 2012).

Evidence is exculpatory if it clears or tends to clear from alleged fault or guilt. FSM v. Kool, 18 FSM R. 291, 293 n.1 (Chk. 2012).

A prosecutor has an ethical obligation to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory or because it is impeaching. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Police are considered part of the prosecution team so that any evidence or information in the hands of the police is considered evidence or information in the prosecution's hands. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The FSM must provide the defendant with any prior witness statements once that witness has testified so that the defense may use it in any cross-examination. The FSM will usually, and is encouraged to, provide those statements far in advance of the witness's testimony. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

A litigant should not be allowed to make use of the liberal discovery procedures applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery and thereby obtain documents he would not otherwise be entitled to for use in his criminal case, but in the absence of substantial prejudice to the rights of the parties involved, parallel proceedings are unobjectionable. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Attempting to obtain, under the civil discovery rules, either through a deposition or otherwise, discovery materials that the parties could not obtain under the more restrictive criminal discovery process, is one of the primary reasons for granting a stay of the parallel civil case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 (Pon. 2014).

Discovery differs greatly in civil and criminal cases. A party to a civil litigation is presumptively entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, but a criminal defendant is entitled to those documents which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 627 n.10 (Pon. 2014).

When the prejudice to the defendants in the civil proceedings is too great to allow for a complete stay, and those proceedings will continue in tandem with the criminal procedures, but certain procedures may be delayed based on the court's own sua sponte initiative or by motion of the parties. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 629 (Pon. 2014).

– Dismissal

Customary settlements do not require court dismissal of criminal proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

After prosecution has been initiated, the court may dismiss litigation if there is no probable cause to believe that a crime has been committed. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM R. 183, 189-90 n.4 (App. 1982).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Although it is reasonable to analyze settlement agreements in civil actions on the basis of contract principles alone, important public policy considerations attach to the settlement of criminal cases. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

Under the common law the death of a criminal appellant pending appeal abates the proceedings ab initio – not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and dismiss the information. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

When a criminal defendant dies while his conviction is on appeal and where there was no discrete victim and where there are no collateral matters impinging upon the case requiring further court proceedings it is appropriate under the facts of the case to abate the proceedings ab initio and vacate the conviction. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

Where counts in an information other than the one count dismissed also charge illegal fishing violations the dismissal of two other counts for which illegal fishing is an element will be denied. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

A dismissal pursuant to FSM Crim. R. 48(a) is granted without prejudice and by leave of court. In considering whether to grant leave, a court must find that the dismissal is in the public interest. Factors among those customarily considered are whether the dismissal involved any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, existed for the dismissal. FSM v. Yue Yuan Yu No. 346, 7 FSM R. 162, 163 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

After prosecution has been initiated, it may be dismissed by a court if there is no probable cause – evidence giving a reasonable ground for suspicion sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense – to believe that a crime has been committed, or that the defendant has committed it. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

Because the trend of the application of customary settlements in the criminal justice system, is its use as excuse, justification or mitigation during the imposition of sentence after conviction for a crime and not as an element of guilt or the dismissal of an information and complaint charging a criminal offense, a motion for

dismissal of a major criminal charge on the grounds that a customary settlement has been reached will be denied. Chuuk v. Sound, 8 FSM R. 577, 579-80 (Chk. S. Ct. Tr. 1998).

A motion to dismiss an information because the named defendant is not a formally constituted entity is moot when the government's motion to amend the information to change the defendant's name to its proper name is granted. FSM v. Moses, 9 FSM R. 139, 142 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM R. 1, 8-9 (Chk. 2002).

The government may by leave of court file a dismissal of an information and thereupon terminate the prosecution. The purpose for requiring court approval of dismissal of a criminal case is to invest the court with sufficient discretion so that the court may determine that dismissal serves the public interest. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 16 (Yap 2002).

Dismissal under Rule 48(a) is appropriate when the government represents that there is insufficient evidence to obtain a conviction. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 16-17 (Yap 2002).

Reasons for which a court may exercise its discretion to dismiss a criminal case are: a plea agreement, the defendant's death, defendant's incompetency to stand trial, government security interests that might be placed at risk by disclosures at trial, when a defendant has cooperated with a prosecutorial investigation, and when the indictment has been superseded. FSM v. Tomiya Suisan Co., 11 FSM R. 15, 17 (Yap 2002).

The relationship between the defendant and victim is never a basis for dismissal of a criminal information. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

A case will not be dismissed when the state's penal code does not excuse the criminal conduct alleged in the case based upon a father-daughter relationship. Many criminal cases with a variety of charges involving members of the same family as defendant-victim are prosecuted to final disposition. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

A prosecutor's request to dismiss a criminal information without any legal basis for such action and contrary to public policy will be denied. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A criminal case will not be dismissed if the whole FSM Department of Justice must be disqualified from prosecuting since a special prosecutor can be appointed. FSM v. Wainit, 12 FSM R. 172, 176 (Chk. 2003).

Even assuming that there was an illegal arrest, a defendant is still not entitled to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. When he did not make any statements to the police, there are no statements to suppress. Kosrae v. Anton, 12 FSM R. 217, 219-20 (Kos. S. Ct. Tr. 2003).

It is the prosecutor's discretion to initiate, continue, or terminate a particular criminal prosecution. However, once prosecution has been initiated, the court also has responsibility to assure that all actions taken thereafter are in the public interest. Public interest requires the court to examine the grounds for a dismissal request. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

Public interest requires the court to examine the grounds for dismissal request. The court may dismiss a criminal case on grounds that the court lacks jurisdiction over the crimes charged. The court may also dismiss a criminal case if there is insufficient evidence to obtain a conviction or if there is a lack of probable cause to believe that a crime has been committed by the defendant. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

When there is no way to determine if prosecutors who were not disqualified would have exercised their discretion to file these charges, the information must be dismissed to allow that to happen. This is because no matter how firmly and conscientiously a prosecutor may steel himself against the intrusion of a competing and disqualifying interest, he never can be certain that he has succeeded in isolating himself from the inroads on his subconscious. The defendant does not have to show actual prejudice, because on the basis of public policy, it will be presumed to exist as a matter of law. The purpose of this is to avoid the appearance of impropriety. This is designed not only to prevent the dishonest practitioner from improper conduct but also to preclude the honest practitioner from being put in a position where he will be forced to choose between conflicting duties. FSM v. Wainit, 12 FSM R. 360, 364 (Chk. 2004).

When a dismissal is not on the merits and the defendant has not been put in jeopardy, the dismissal is without prejudice. FSM v. Wainit, 12 FSM R. 360, 365 (Chk. 2004).

Since the statute and possibly the rules require sworn written statements to be filed with the information, when no such statements were attached, motions to dismiss on this ground will be granted. These dismissals are not on the merits. Neither defendant has been put in jeopardy. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

The dismissal of a criminal case because of a statutorily defective information is without prejudice. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution. It imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

A four-factor balancing test for determining speedy trial violations: — length of delay, the reason for the

delay, the defendant's assertion of his right, and prejudice to the defendant — is an appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right. It is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

In determining whether to exercise its discretionary power to dismiss under Rule 48(b), the court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

The attorney for the government may by leave of court file a dismissal of an information or complaint. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Factors to examine when determining whether a dismissal is in the public interest include whether the dismissal involved any harassment of the defendants and whether a bona fide reason exists for the dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

The court is required to exercise sound judicial discretion in considering a request for dismissal. This requires that the court have factual information supporting the request. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Rule 48 contemplates public exposure of the reasons for a prosecution's abandonment in order to prevent abuse of the power of dismissal. The court must be satisfied that the reasons advanced for dismissal are substantial and in the public interest and are the real grounds upon which the application is based, and it should not be content with mere conclusory statements that the dismissal is in the public interest, but will require a statement of the underlying reasons and underlying factual basis. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

When, although the settlement contains fines which seem quite small in comparison to the potential fines the defendants face if found guilty, the particular violations are minor and somewhat technical violations of the law, rather than a blatant disregard of the law regulating foreign fishing vessels operating in FSM waters, and when the settlement amount includes an understanding by the FSM that its case is not a very strong one and it is very possible that it might not be able to prove its case against the defendants if it took the case to trial, the court finds sufficient reasons stated to justify dismissal of the action. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

The attorney for the government may by leave of court file a dismissal of an information or complaint. FSM v. Ching Feng 767, 12 FSM R. 498, 502 (Pon. 2004).

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Dismissal of a case is warranted when the statute of limitation applicable to both of the counts in the criminal information had elapsed before the case was filed. FSM v. Ching Feng 767, 12 FSM R. 498, 504-05 (Pon. 2004).

When a criminal information is not supported by written statement(s) under oath showing probable cause to the court's satisfaction before a penal summons (or an arrest warrant) is issued, there is no ground stated that would warrant dismissal of the information if there is nothing before the court that indicates that the information is not a "plain, concise and definite statement of the essential facts constituting the offense." But the summonses issued pursuant to such an information are improperly issued and the resulting initial appearances are as a consequence defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

The Governor's issuance of Declaration of Temporary State of Emergency and the Executive Decree, which prohibited the issuance of drinking permits, possession and consumption of alcoholic drinks by persons under the age of 35 and revoked drinking permits which had been issued to persons under the age of 35, exceeded the authority granted to him by the Kosrae Constitution, Article V, Section 13 because there was no civil disturbance, riot, typhoon, natural disaster or immediate threat of war or insurrection which constituted an "extreme emergency" and the Decree was therefore unconstitutional and void. Any criminal charges which have been based upon violation of the Executive Decree must be dismissed. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the

defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

Although the initial filing of the case as a criminal matter, and not as a juvenile proceeding, was in error, when as soon as the court was informed that the defendant was minor, the Juvenile Rules were immediately applied to the proceedings and all proceedings were then closed to the public, and the court ensured that a parent of the defendant was present at all proceedings, there was no prejudice to the defendant and the defendant's motion to dismiss on that ground will be denied. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. When the statute complained of, while not mathematically precise, gives fair notice of the acts that will be punished, payment for expenses other than expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the national government's purposes and goals, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

Asserting a duress defense at a pretrial stage in the proceedings and on the basis of the showing that another was armed and the defendants were assumed not to be armed does not entitle the movants to a dismissal at this point. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A four-factor balancing test – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – is used to analyze the meaning of the FSM Constitution's speedy trial right and to determine speedy trial violations; and it is also an appropriate tool to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

To determine whether to exercise its discretionary power to dismiss under Rule 48(b), a court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. The delay caused by a defendant's requests, although justified since the court granted relief based on his motions, thus cannot be used by the defendant to seek a dismissal on the ground that his speedy trial right was violated or that there has been unnecessary delay in bringing him to trial. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

Although a motion to dismiss stands unopposed, and while failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609, 613 (Pon. 2007).

A defendant cannot be sentenced on both a greater and lesser-included offense. However, this is not grounds for dismissal of either charge prior to trial. If the state proves all elements of both offenses, then the court may enter a conviction and sentence for the greater offense. Kosrae v. Likiaksa, 14 FSM R. 618, 621 (Kos. S. Ct. Tr. 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).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

Chuuk Criminal Rule 48(a) provides that the attorney for the state may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate, but it is not a proper authority for a defendant to request a dismissal. Chuuk v. Menisio, 15 FSM R. 276, 280 & 281 n.3 (Chk. S. Ct. Tr. 2007).

A defendant's motion to dismiss will be denied when the court is unable to ascertain, from its review of the motion and supporting memorandum, whether there is any factual or legal basis that may support it. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

A criminal information filed against a legislator who is the chairman of an impeachment committee while there is an article of impeachment currently being investigated will not be dismissed on the basis of a statute that provides criminal penalties for attempting to interfere with the impeachment process since the statute could not provide a blanket protection against prosecution for any member of an impeachment proceeding or it would lead to the absurd result that a member of an impeachment proceeding could commit any crime with impunity. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

When a review of the amended informations and their supporting affidavits reveals no basis for the claim that the information fails to set forth the essential facts constituting the charges against the defendants, their motion to dismiss will be denied. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

When the accused produced no evidence to substantiate his claim that the weapon he allegedly possessed was in unserviceable condition (such as producing the weapon itself, or even a witness's report on the weapon's condition) and that it was kept as a curio, an ornament, or for historical purposes, but instead, argued that despite his repeated discovery requests, the government had failed to provide access to the firearm that he allegedly possessed so that it could, in turn, be inspected, this argument is more appropriately suited for a motion to compel discovery, rather than a motion to dismiss. The accused is free to raise at trial the defense that the weapon he allegedly possessed falls within the exemption. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

When a prosecution was commenced within the time limits set by Kosrae State Code §13.106(2)(b), there is no statutorily-required dismissal. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Criminal Procedure Rule 12(a) abolished motions to quash an information, but any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by motion under Criminal Rule 12(b). Thus, if a motion to quash information is filed, it will be considered a Rule 12(b) motion to dismiss the information. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

After prosecution has been initiated, the court may dismiss the case if there is no probable cause to believe that a crime has been committed, but a finding of probable cause may be based upon hearsay

evidence in whole or in part. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

Although, there may be cases when an affidavit containing multiple layers of hearsay is deemed sufficiently reliable to prove probable cause, when the affidavit fails even a minimal level of reliability that might be justified by exigent circumstances, which, in any case, were not present, the affidavit filed with the information was not reliable enough to prove probable cause and the defendant's motion to suppress the affidavit of probable cause and for dismissal was therefore granted, and the case was dismissed. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Under Criminal Procedure 48(a), the government's attorney may by leave of court file a dismissal of an information or complaint and the prosecution will thereupon terminate. Although the government has broad discretion in determining whether to initiate a criminal prosecution, once that prosecution is started in the FSM Supreme Court, the court has responsibility for assuring that actions taken thereafter are in the public interest. FSM v. Fritz, 16 FSM R. 175, 176 (Chk. 2008).

Rule 48 contemplates public exposure of the reasons for a prosecution's abandonment in order to prevent abuse of the dismissal power. The court thus must be satisfied that the reasons advanced for dismissal are substantial and in the public interest and are the real grounds upon which the application is based, and it should not be content with mere conclusory statements that the dismissal is in the public interest, but require a statement of the underlying reasons and underlying factual basis. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

A cost-benefit analysis – that the government does not want to bear the expense of trying the case by sending an FSM assistant attorney general from Pohnpei with the attendant airfare, per diem, and car rental costs and with only \$1,000 in the budget for witness expenses when the vehicle the defendants were alleged to have conspired to steal from the national government was in its possession, and, after four years' of use since the case was filed, had become rundown and inoperative – is more appropriately made when the prosecution is exercising its discretion in deciding whether to file criminal charges, and not as a ground for leave to dismiss. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

When a new prosecutor stated that she had reviewed the case file and had concluded that the government had insufficient evidence to sustain convictions against the defendants, this is a stronger ground for motion for leave to dismiss. Factors among those customarily considered when the court is determining whether to grant leave to dismiss under Rule 48(a), are whether the dismissal involves any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, exists for the dismissal. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

The court may grant leave to file a dismissal when the government doubts it has the evidence to sustain convictions in this case and thus thinks it advisable not to expend more of its limited resources on a prosecution it concludes that it does not have a reasonable chance of completing successfully. The prosecution of the case will terminate once the government's dismissal is filed. FSM v. Fritz, 16 FSM R. 175, 177 (Chk. 2008).

An oral motion to dismiss the case because the prosecution, by not putting on any witnesses or evidence, failed to establish a prima facie case against the accused at the hearing will be denied when the hearing was not a preliminary examination or an initial appearance, or some other proceeding at which the government is required to make a prima facie showing of the case against the defendant but was a pretrial hearing on the defendant's Rule 12(b)(2) and (3) motions – motions alleging defects in the information and to suppress evidence. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

The dismissal of a case is warranted when the statute of limitations applicable to the count in the criminal information elapses before the case is filed. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the statute of limitations to both counts in a criminal information had elapsed before the case was filed, the dismissal of the case is warranted. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A motion to dismiss will be denied when motion contains only conclusory language that fails to specify the grounds with any particularity and when it speculates that the information was based on the movant's unlawfully-taken statement even though the information's supporting affidavit never mentions any statement. FSM v. Aliven, 16 FSM R. 520, 526 (Chk. 2009).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

A motion to dismiss conspiracy counts will be denied when the affidavit stated the essential facts constituting the charges and was based on the first-hand knowledge of the affiant who was the investigating officer; when the information clearly stated the nature of the acts charged; and when, although the affidavit referred to witness statements that were suppressed, the affidavit also contained a considerable amount of other evidence, including the substance of the affiant's interviews with eye-witnesses, which supported probable cause. Such hearsay statements, if reliable, may support a finding of probable cause for instituting a prosecution. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

The suppression of witness statements does not necessitate a dismissal when there is other evidence that supports probable cause for the charges. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

When a count, even reading it together with the facts incorporated by reference and the supporting affidavit, does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

The pretrial dismissal of an information, or of counts in an information, does not, if the facts permit, bar the prosecution from filing a superseding information if the accused has not yet been put in jeopardy. FSM v. Esefan, 17 FSM R. 389, 398 n.6 (Chk. 2011).

An illegal arrest will not entitle a defendant to dismissal of the information. The remedy for an illegal arrest, for failure to provide cause and authority of the arrest, is suppression of any statements made by the defendant. Chuuk v. Hauk, 17 FSM R. 508, 512, 514 (Chk. S. Ct. Tr. 2011).

When an accused's motion to dismiss alleges, in the complete absence of supporting facts or reference to any legal standard under which such facts might be analyzed, that there is probable cause to believe the State has intentionally and maliciously instituted criminal actions against him, the court will not take such an allegation lightly as it implicates the integrity of the Chuuk State Attorney General's office and will order the defendant to show cause for making the allegation. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

A superseding information is proper unless it and the dismissal of the original information were done for the purpose of harassment. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The principal object of the Rule 48(a) "leave of court" requirement for a dismissal without prejudice by the prosecution is apparently to protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging, when the prosecution moves to dismiss an indictment over the defendant's

objection. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The dismissal of a prosecution without prejudice is proper when the information has been superseded since it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Meitou, 18 FSM R. 121, 126-27 (Chk. 2011).

Seven months from alleged offense to trial is not an undue delay entitling an accused to a Rule 48(b) dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

If, when a superseding information has been filed, more time to prepare a defense is needed, the proper remedy to cure that prejudice would be a continuance, not a dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

An information must charge all the essential elements of the offense, when it does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A pretrial motion cannot use the statutorily-defined defense of duress to dismiss an information, since duress is a defense that must be determined at trial. Self-defense is similar in that it also is a factual defense that must be determined at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Rule 48(b) embraces the court's inherent power to dismiss for want of prosecution. It is not limited to those situations in which the defendant's constitutional speedy trial right has been violated because it imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Generally, in deciding whether the delay between the crime's commission and the filing of charges requires a dismissal, courts must find that the defendant has suffered actual prejudice due to the delay. Prejudice to an accused from delay may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense, and of these, the most serious is the last. The burden of demonstrating actual prejudice is on the defendant and the proof must be definite and not speculative. FSM v. Kool, 18 FSM R. 291, 296 (Chk. 2012).

When an FSM court has not previously construed some aspects of an FSM criminal procedure rule, such as Rule 48(b), which is drawn from a similar U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Kool, 18 FSM R. 291, 296 n.3 (Chk. 2012).

When an accused did not demonstrate any actual prejudice to him due to the delay before charges were filed, the court must deny his Rule 48(b) motion to dismiss. FSM v. Kool, 18 FSM R. 291, 296 (Chk. 2012).

Dismissal under Rule 48(a) is appropriate when the government represents that there is insufficient evidence to obtain a conviction. Chuuk v. Ranik, 19 FSM R. 25, 26-27 (Chk. S. Ct. Tr. 2013).

A dismissal under Criminal Rule 48(a) is granted without prejudice and by leave of court. In considering whether to grant leave, a court must find that the dismissal is in the public interest. Factors among those customarily considered are whether the dismissal involved any harassment of the defendants and whether a bona fide reason, such as insufficient evidence to obtain a conviction, existed for the dismissal. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

When the court records indicate that the prosecution verbally moved for leave of the court to dismiss

the case under Rule 48(a) of the Chuuk State Supreme Court Rules of Criminal Procedure and when the oral motion to dismiss coupled with the record fail to disclose any evidence of bad faith because the decision to terminate the prosecution was motivated by considerations that were not clearly contrary to manifest public interest, the dismissal will be granted. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

"Leave of court" in Rule 48(a) functions as a check on the prosecution's power to dispose of cases. Absent a demonstration of bad faith, the court has little discretion in regards to a Rule 48(a) motion to dismiss. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

A dismissal will be granted when the court cannot conclude that the government used Rule 48(a) to gain a tactical advantage, nor was there a demonstration of bad faith. Chuuk v. Ranik, 19 FSM R. 25, 27 (Chk. S. Ct. Tr. 2013).

The dismissal of a 2007 case is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Chopwa, 19 FSM R. 28, 31-32 (Chk. S. Ct. Tr. 2013).

When the four speedy trial factors, on balance, show that the defendant has suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because an excessive length of time that has passed coupled with the absolute lack of diligence on the prosecution's part are sufficient to assume prejudice; when the delays were a direct result of the state failing to diligently prosecute the case, the case will be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The better procedure is for the prosecution to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case before a dismissal. Something more than nothing would be a necessary action to avoid dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and meet the standard for dismissal, may be dismissed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

When the prosecution simply failed to move the case forward, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

The court is not merely interested in "cleaning house" and dismissal is appropriate when the defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in the prosecution's bringing this case to trial because the case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties, which demonstrates the prosecution's desire to abandon the case rather than continue to prosecute, and because the prosecution has taken no action in the case since the stipulated motion's filing. Chuuk v. Noboru, 19 FSM R. 38, 42-43 (Chk. S. Ct. Tr. 2013).

When the record shows that the delays were a direct result of the prosecution failing to diligently prosecute the case; when the court is unwilling to encourage this behavior by the prosecution; and when

something more than nothing would be a necessary action, the action will be dismissed without prejudice for lack of prosecution. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

A four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

When it can reasonably be inferred from the lack of activity on the record that the state had been deliberately proceeding in dilatory fashion, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the state offers no reason for its failure to comply with the defendant's constitutional right to a speedy trial; when it was only after the court issued a notice that the state requested leave to begin trial; when the state's failure to make the request on its own, further demonstrates a lack of diligence in prosecuting this case; and when, on three separate occasions, the prosecutor neglected to attend the trials, dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute the case since a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The case will be dismissed without prejudice for lack of prosecution when, taking a look at the state's processing of the case before the dismissal, the four speedy trial factors, on balance, show that the defendant suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because the record does show that the delays were a direct result of the state failing to diligently prosecute the case, and because the excessive length of time that has passed coupled with the absolute lack of diligence on the state's part are sufficient to assume prejudice. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

When in an information, one count requires proof of identical allegations (facts and elements) as another count, and would thus violate a defendant's double jeopardy protection if he were convicted of both and then punished for both, the proper remedy is not to dismiss before trial some counts based on what might happen since the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

When some evidence was obtained by means sufficiently distinguishable to be purged of the primary taint, it will not be suppressed, and therefore the court will not quash the information. FSM v. Benjamin, 19 FSM R. 342, 350 (Pon. 2014).

Generally, the filing of an information within the statute of limitations time frame weighs in favor of non-dismissal, unless evidence of bad faith reasons for the delay are shown. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

There is no authority that a crime is no longer a crime and the case must be dismissed once the accused has repaid all of the alleged financial losses, but, if the accused were found guilty, the repayment would likely have some effect on the degree of punishment. FSM v. Itimai, 20 FSM R. 131, 135 (Pon. 2015).

An accused's joblessness during the time period that the government was tardy in opposing his motion to dismiss, does not constitute prejudice in the legal sense since it did not adversely affect his legal position or his defense. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

The court will take an information's factual allegations as true for jurisdictional purposes and determine whether those factual allegations do allege a crime over which the court can exercise jurisdiction. The government's allegations remain to be proven at trial. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015).

Since the FSM Supreme Court has jurisdiction over crimes committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty, it will not dismiss a case where all of the acts and omissions the defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty. FSM v. Itimai, 20 FSM R. 232, 235 (Pon. 2015).

When the FSM's failure to incorporate the fisheries management agreement provisions by reference in statute, or regulation, or in permits and access agreements leaves the law so vague and ill-defined that what are the acts prohibited cannot be understood by people of ordinary intelligence, and so it cannot serve as a basis for criminal prosecution, the court must grant the defendants' motion to dismiss those counts for the Information's failure to charge an offense. FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

– Disturbing the Peace

The offense of disturbing the peace requires proof beyond a reasonable doubt of wilfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant intruded upon the victim while she was sleeping, committed acts to wake the victim from her sleep, restrained her and attacked her, and that she was deprived of her peace, quiet and sleep that night by the defendant's actions, the state has proven beyond a reasonable doubt all the elements of the criminal offense of disturbing the peace. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The criminal offense of disturbing the peace requires proof beyond a reasonable doubt of wilfully committing any act which unreasonably annoys or disturbs another so that he is deprived of peace and quiet. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

When it is undisputed that the defendant did lay down next to a girl while she was sleeping and pulled the sheets from her and this act woke up her from her sleep and caused her to be frightened by the defendant's acts and when it is undisputed that the defendant's acts caused the girl's mother to be woken from her sleep by her daughter's calls, and that the defendant's acts unreasonably disturbed the mother, the state has proven beyond a reasonable doubt the elements of the criminal offense of disturbing the peace, against two victims. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

Since the words "ulensumon" are so offensive such that they would unreasonably disturb a reasonable female and are so offensive such that they would provoke an immediate violent reaction in a reasonable female, a defendant who wilfully stated the subject words "ulensumon" to a female complainant will be found guilty and convicted of the offenses of disturbing the peace and of offensive behavior in a public place. Kosrae v. Tilfas, 13 FSM R. 501, 502-03 (Kos. S. Ct. Tr. 2005).

Disturbing the peace is wilfully committing any act which unreasonably annoys or disturbs another so that he is deprived of peace and quiet, or which provokes a breach of the peace. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

When the defendant telephoned the victim early in the morning and accused her of causing the death of a child and since such an alarming accusation had no purpose other than to disturb the person accused; when the call and the statement were not accidental or careless, but were intentional and willful and the timing of the call in the early morning and what was said demonstrated unreasonableness; and when the evidence that the victim was upset and disturbed by the call and statements, the elements of the charge of disturbing the peace were demonstrated beyond a reasonable doubt. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

Although in many jurisdictions (and in the Model Penal Code) disturbing the peace requires a public disturbance or annoyance, in some jurisdictions, such as Kosrae, the statute requires only a private

annoyance. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will – is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

– Double Jeopardy

The principal purpose of the protection against double jeopardy established by FSM Constitution, article IV, section 7 is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Laion v. FSM, 1 FSM R. 503, 521 (App. 1984).

The double jeopardy clause, FSM Const. art. IV, § 7, of the Declaration of Rights of the FSM Constitution was drawn from the Bill of Rights of the United States Constitution. Laion v. FSM, 503, 522 (App. 1984).

The double jeopardy clause of the FSM Constitution protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

United States constitutional law at the time of the Micronesian Constitutional convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. Laion v. FSM, 1 FSM R. 503, 523-25 (App. 1984).

When assault with a dangerous weapon requires use or attempted use of a dangerous weapon, a fact not required for aggravated assault, and aggravated assault requires an intent to cause serious bodily injury, which need not be proved for conviction of assault with a dangerous weapon, conviction on both charges for the same wrongful act will not violate the double jeopardy clause of the Constitution. Laion v. FSM, 1 FSM R. 503, 524 (App. 1984).

When a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is not cumulative or multiple punishments that might violate the double jeopardy

clause. Laion v. FSM, 1 FSM R. 503, 524 (App. 1984).

While Congress is not prevented by the double jeopardy clause from providing that two convictions of the same import may flow from a single wrongful act, a court will not merely assume such a congressional intention. Laion v. FSM, 1 FSM R. 503, 525 (App. 1984).

When two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

The protection against double jeopardy in a second trial is not available until the person has first been tried in one trial. Jeopardy does not attach in a criminal trial until the first witness is sworn in to testify. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 128 (Pon. 1995).

Where the defendant has not yet been convicted of any crime, the protection against double jeopardy does not attach. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM R. 633, 637 (Chk. 1996).

There is no violation of the double jeopardy clause of the FSM Constitution if each offense charged requires proof of a fact which the other does not. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 179 (Pon. 1997).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met, a dual conviction will not violate the constitutional protection against double jeopardy. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

If, for the same act, both a lesser included and a greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both the higher and the lesser included offense arising out of the same criminal transaction. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

The constitutional protection against double jeopardy protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. Kosrae v. Kilafwakun, 12 FSM R. 590, 593-94 (Kos. S. Ct. Tr. 2004).

When the sexual abuse and sexual assault statutes each require proof of a fact which the other offense does not — the offense of sexual assault requires proof of the fact of intercourse, penetration, cunnilingus or fellatio; the offense of sexual abuse requires proof of the victim's age, but does not require proof of the fact of intercourse or penetration since sexual contact through touching is adequate — the court may enter findings and a decision on both offenses without violating double jeopardy protections. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

If for the same act, both a lesser included and a greater offense are proven, the court should enter a conviction on only the greater offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

If for the same act, both a lesser included and a greater offense are proven, the court should enter a

conviction on only the greater offense. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

The double jeopardy clause protects an accused against the following: 1) a second prosecution for the same for the same offense after acquittal; 2) a second prosecution for the same offense after conviction; and 3) against multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

The test to determine whether the same act or transaction constitutes a violation of two distinct statutory provisions is whether each provision requires proof of a fact which the other does not. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

Generally, there can be only one prosecution for a continuing crime. However, a distinct repetition of a prohibited act constitutes a second offense and subjects the offender to an additional penalty. Separate and distinct crimes occur, even when they are very similar acts done many times to the same victim, they are chargeable individually as separate and distinct criminal conduct. Kosrae v. Kinere, 13 FSM R. 230, 239 (Kos. S. Ct. Tr. 2005).

Each instance of sexual penetration may be charged and prosecuted as a separate violation of Kosrae State Code, Section 13.311. Each factually distinguishable act of sexual penetration is subject to prosecution as a separate count, conviction and sentencing when the defendant committed three factually distinguishable acts of sexual penetration upon the same victim and the record reflects that each of the three acts that the defendant's conduct was separate in time and showed the defendant's new intent in his course of conduct. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

An argument that multiple acts of sexual penetration committed during a single continuous criminal episode can be subject only to conviction and sentencing on a single count is not supported by public policy. No principle exempts an accused from prosecution for all the offenses that were committed, just because the accused has the opportunity and willingness to multiply those offenses. Such a principle would encourage the more vicious and repeated criminal acts. The State Legislature could not have intended to grant immunity to a criminal who committed one sexual assault upon a minor victim, from prosecution and punishment for further criminal acts committed during the same encounter. When the defendant's conviction and sentencing upon three counts of sexual assault upon the same victim during the same criminal episode were based upon factually distinct acts and offenses, they are not multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 241-42 (Kos. S. Ct. Tr. 2005).

Both the FSM and Kosrae constitutions contain protections against double jeopardy. The purpose of these provisions is to prevent the government from making repeated attempts to convict an individual for the same alleged act. They protect against a second prosecution for the same offense following conviction or acquittal and against multiple punishments for the same offense. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

There can be no cumulative punishment for a single offense absent clear legislative intent. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

When the defendant committed three distinct acts upon the victim and the act of fellatio occurred at a different time and in a different location than did the acts of anal intercourse and the two acts of anal intercourse were separated by an act of battery (a bite) the defendant penetrated the victim's body at least three times and he thus, did not receive multiple punishments for a single offense. On the contrary, he received multiple punishments for multiple offenses. The State was not required to prove that a significant amount of time elapsed between the three acts of penetration. Kinere v. Kosrae, 14 FSM R. 375, 384 (App. 2006).

A court will not approve any principle which exempts one from prosecution from all the crimes he commits because he sees fit to compound or multiply them. Such a principle would encourage the compounding and viciousness of the criminal acts. Kinere v. Kosrae, 14 FSM R. 375, 385 (App. 2006).

When, although the language of counts six and eight was identical, the two acts of anal penetration were separated by an act of battery and the defendant penetrated the victim three separate times and although counts six and eight should have included distinguishing language, the duplication in the information, in itself, did not compromise the defendant's constitutional right against double jeopardy. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

Having concluded that counsel was not constitutionally ineffective for failing to raise the defense of double jeopardy, the court must conclude that it is irrelevant whether counsel would have raised the defense if he had pondered the case longer. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

The principal purpose of the protection against double jeopardy is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Thus, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

Where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there are no cumulative or multiple punishments that might violate the double jeopardy clause. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

If, for the same act, both a lesser included and greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met, a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the alleged violations are each the same, *i.e.*, violation of 19 F.S.M.C. 425, the merger doctrine which merges higher and lesser offenses arising from a single criminal act, does not apply. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (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 defendant cannot be sentenced on both a greater and lesser-included offense. However, this is not grounds for dismissal of either charge prior to trial. If the state proves all elements of both offenses, then the court may enter a conviction and sentence for the greater offense. Kosrae v. Likiaksa, 14 FSM R. 618, 621 (Kos. S. Ct. Tr. 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).

The right not to be tried more than once and the right not to receive multiple convictions and punishments for the same offense are both protected by the double jeopardy clause but they are conceptually distinct rights. 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).

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).

In determining the double jeopardy clause's scope and meaning the court first looks to the language of the Constitution itself. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. The Double Jeopardy Clause, like most provisions of the Declaration of Rights, was drawn from the United States Constitution's Bill of Rights. Thus, United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's Double Jeopardy Clause. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Under the dual sovereignty doctrine, since the national government and its individual states are independent sovereigns, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. FSM v. Louis, 15 FSM R. 348, 354-55 (Pon. 2007).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The rule against double jeopardy provides three types of protection for criminal defendants: it protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

The dual sovereignty doctrine provides an important limitation on the application of double jeopardy to related state and national prosecutions. Under the dual sovereignty doctrine, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. The reason is that the national government and its individual states are independent sovereigns, and prosecutions under the laws of those separate sovereigns do not subject a defendant to be twice put in jeopardy. If the constitutional protection against double jeopardy did apply to prosecutions under the laws of independent sovereigns, then prosecution by one sovereign for a relatively minor offense might bar prosecution by another sovereign for a much graver offense, effectively depriving the latter of the right to enforce its laws, and defendants would always race to stand trial in the court where the charges were less severe in order to bar the second action. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

Double jeopardy only applies against multiple punishments for the same offense. When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

Double jeopardy generally bars a second action if the defendant is acquitted on the merits, but the vacating of a conviction on the ground of a material variance between pleading and proof is not an acquittal on the merits. Rather, when there is a material variance between the pleadings and a court's findings that results in vacating a conviction, the defendant will not be in jeopardy against a subsequently filed information with new allegations because the defendant was never called to defend against those allegations. Chuuk v. Kasmiro, 16 FSM R. 404, 407 (Chk. S. Ct. Tr. 2009).

The FSM Constitution's double jeopardy clause protects 1) against a second prosecution for the same offense after acquittal, 2) against a second prosecution for the same offense after conviction, and 3) against multiple punishments for the same offense. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not, and, if the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

A criminal information's allegations must be proven in order to obtain a conviction, and it is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Thus, when in an information, one count requires proof of identical allegations (facts and elements) as another count, it would violate a defendant's double jeopardy protection if he were convicted of both and then punished for both. The proper remedy, however, is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. But if, after trial, the court finds the defendant guilty of both counts, a conviction will be entered only on one of those two counts. FSM v. Aliven, 16 FSM R. 520, 530-31 (Chk. 2009).

When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

When the same conduct may amount to more than one offense, the defendant may be prosecuted for each offense. But he may not be convicted of more than one offense if one offense is included in the other, or if one offense as defined prohibits a certain kind of conduct generally, and the other prohibits a specific instance of such conduct. FSM v. Aliven, 16 FSM R. 520, 531 (Chk. 2009).

While a defendant cannot be sentenced to consecutive sentences on a greater and lesser-included offense arising from the same act, the government does not have to identify which of its charges in its criminal information it intends to pursue prior to conviction. Rather, it is entitled to pursue, at trial, multiple

claims based on the same act, and a defendant's motion for pretrial dismissal or for a bill of particulars will be denied. Chuuk v. Suzuki, 16 FSM R. 625, 631-32 (Chk. S. Ct. Tr. 2009).

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).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

A pretrial dismissal of a criminal prosecution would not raise double jeopardy concerns if the appellate court were to order the case reinstated because the accused had not once been put in jeopardy. Jeopardy does not attach in a criminal trial until the first witness is sworn in to testify. Kosrae v. George, 17 FSM R. 5, 7 n.1 (App. 2010).

When faced with an accused's claim that it would violate his protection against double jeopardy if he were convicted of both of two charged counts and then sentenced for both, the proper remedy is not to dismiss before trial some counts based on what might happen. When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. The government, however, will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. FSM v. Esefan, 17 FSM R. 389, 396 (Chk. 2011).

When faced with an accused's claim that it would violate his protection against double jeopardy if he were convicted of both on two counts and then sentenced for both, the proper remedy is not to dismiss before trial some counts based on what might happen. When two statutory provisions aimed at similar types of wrongdoing and at upholding public interests of the same nature would apply to a solitary illegal act that caused only one injury, the statutes will be construed as not to authorize cumulative convictions. The government, however, will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

Jeopardy attaches only when the first witness is sworn in to testify at trial. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The FSM Constitution's double jeopardy clause protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense. The usual remedy for a successful double jeopardy claim is an order barring or dismissing the second prosecution or barring the imposition of the multiple punishment. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

When an official has been impeached, a trial on criminal charges is not foreclosed by the principle of double jeopardy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Since the FSM constitutional protection against double jeopardy is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning and scope. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 n.1 (Pon. 2012).

The remedy of impeachment has the single role of affecting only the right to hold office and is not intended to bar or delay another remedy for a public wrong. The other remedy is often a criminal prosecution. This is because the remedy of impeachment is not exclusive of any other public remedy for the same misbehavior, and if the cause for which the officer is punished is a public offense, he may also be indicted, tried, and punished. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A single act of misconduct may offend the public interest in a number of areas and call for the appropriate remedy for each hurt. Thus it may require removal from office. It may also require criminal prosecution. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Impeachment and removal from office is not criminal punishment under the FSM Constitution's double jeopardy clause. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A government official's misconduct does not present a government with an irrevocable choice to either criminally prosecute the official or to impeach and try to remove that official from office. If the offending official has not resigned from office first, the government may do, and is usually expected to do, both. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A former government official cannot claim he was subjected to double jeopardy because he was convicted of public offenses and then impeached and removed from office for those same offenses. Nor could he have claimed double jeopardy if he had first been impeached and removed from office and then prosecuted for the same public offenses. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

The FSM and Kosrae Constitutions' double jeopardy clauses protect a person from a second prosecution for the same offense after acquittal, from a second prosecution for the same offense after conviction, and from multiple punishments for the same offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

When in an information, one count requires proof of identical allegations (facts and elements) as another count, and would thus violate a defendant's double jeopardy protection if he were convicted of both and then punished for both, the proper remedy is not to dismiss before trial some counts based on what might happen since the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

A criminal defendant is not in danger of being subjected to multiple punishments in the same prosecution until the defendant has been found guilty. A pretrial motion raising a double jeopardy claim of multiple punishments is premature because the defendant may be acquitted on one or all of the charges. Thus, multiple charges in an information is not a defect in the information and is not a claim that is required to be made before trial or it will be deemed waived. A defendant's multiple punishment double jeopardy claim is a claim that cannot be raised before trial but may be raised after guilty findings for more than one offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

A double jeopardy claim that a person was or will be tried twice for the same offense may be raised (and appealed) at any time. Benjamin v. Kosrae, 19 FSM R. 201, 208 n.4 (App. 2013).

The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

The test for determining whether an offense is the lesser-included of another is whether the greater offense can be committed without committing the lesser. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

There are two theories under which a particular offense may be determined to be a lesser included offense of a charged offense — the "statutory theory" and the "pleading theory." Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the

lesser included offense. In effect, under the pleading theory, an offense is an included offense if it is alleged in the information as a means or element of the commission of the higher offense. The pleading theory is the broader theory. Benjamin v. Kosrae, 19 FSM R. 201, 209 (App. 2013).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

The principal purpose of the protection against double jeopardy established by the FSM Constitution is to prevent the government from making repeated attempts to convict an individual for the same alleged act. Chuuk v. Koky, 19 FSM R. 479, 480 (Chk. S. Ct. Tr. 2014).

The test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. Similarly, where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is no cumulative or multiple punishments that might violate the double jeopardy clause. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

If both the use-of-a-slingshot offense and assault-with-a-dangerous-weapon offense are proven with respect to the same act, the court will enter a conviction on only the greater offense of assault with a dangerous weapon. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

The FSM and Kosrae Constitutions prohibit double jeopardy. The purpose of these provisions is 1) to prevent the government from making repeated attempts to convict an individual for the same alleged act; 2) to prevent a second prosecution for the same offense following a conviction or a acquittal; and 3) to prevent multiple punishments for the same offense. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

The test for determining whether an offense is a lesser-included offense of another is whether the greater offense can be committed without committing the lesser. Ned v. Kosrae, 20 FSM R. 147, 153-54 (App. 2015).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

An attempt to commit a crime is a lesser included offense that merges with the greater ("target") offense if the attempt is successful. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

If the target crime is in fact committed, there can be no conviction for attempt, since the actor's prior conduct is deemed merged in the completed crime. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

An assault is a lesser included offense of assault and battery. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Under the statutory theory, a crime may be a lesser included offense if its elements are necessarily included in the greater crime, as the greater crime is defined by statute. Under the pleading theory, a crime may be a lesser included offense if the charging document alleges facts the proof of which necessarily includes proof of the elements of the lesser included offense. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will – is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

The double jeopardy clause provides three basic protections. It protects a person against a second prosecution for the same offense after an acquittal, against a second prosecution for the same offense after a conviction, and against multiple punishments for the same offense. FSM v. Kimura, 20 FSM R. 297, 300 (Pon. 2016).

When the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not, and, if the test is met a dual conviction will not violate the constitutional protection against double jeopardy. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

When there are counts that may duplicate another count and when a conviction on both counts would violate the protection against double jeopardy, the proper remedy is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. If the government obtains a guilty finding for the same defendant on two counts that do constitute the same offense, a conviction will be entered only on one of those two counts. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

If and when the defendants are found guilty on two or more counts they deem to constitute the same offense, they may then raise their double jeopardy concerns about being subjected to multiple punishments for the same offense and may argue the rule of lenity. FSM v. Kimura, 20 FSM R. 297, 301 (Pon. 2016).

– Escape

The national escape statute's requirements are met where an escaped defendant was being held for law enforcement purposes by state police officers authorized to detain on behalf of the Federated States of Micronesia. 11 F.S.M.C. 505. FSM v. Doone, 1 FSM R. 365, 367 (Pon. 1983).

The law generally requires that a prisoner test the legality of his detention in a court of law rather than attempt to enforce his own claim to freedom. FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

A prisoner held illegally in a custodial facility is never permitted to escape. 11 F.S.M.C. 505(3). FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

Outside of a custodial facility, one illegally detained by a law officer acting in good faith is entitled to escape only if he can do so with "no substantial risk of harm to the person or property of anyone other than the defendant." FSM v. Doone, 1 FSM R. 365, 368 (Pon. 1983).

To minimize disruption and challenges to official police authority, the statutory exceptions to prohibitions against escape should be read restrictively. 11 F.S.M.C. 505. FSM v. Doone, 1 FSM R. 365, 368-69 (Pon. 1983).

A police car being used to maintain custody as well as transport a detainee from one custodial facility to another is a custodial facility within the meaning of 11 F.S.M.C. 505(3). FSM v. Doone, 1 FSM R. 365, 369 (Pon. 1983).

A police vehicle being used to transport an arrest person from the police station to the jail is a custodial facility within the meaning of 11 F.S.M.C. 505(3), and a person who, having been informed that he is under arrest, flees from such a vehicle and the custody of a police officer authorized to detain or arrest persons on behalf of the Federated States of Micronesia, is guilty of an escape under 11 F.S.M.C. 505(1). Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

Illegality of arrest or detention is no defense to a charge that one has unlawfully escaped from a custodial facility. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

Escape from state police officers, authorized by a Joint Law Enforcement Agreement Between the National Government and the State to detain and arrest persons on behalf of the Federated States of Micronesia can be the foundation for an escape conviction under 11 F.S.M.C. 505(1), without regard to whether the detention was for a major crime. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

In the absence of any explanation in the legislative history or from the government to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the national prohibitions against escape. 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

One of the elements of escape is that the person charged is under lawful custody. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

When an accused's custody had exceeded twenty-four hours at the time he committed the alleged escape and therefore the custody was not lawful and when the evidence to support the escape charge was obtained as a direct result of that unlawful detainment and was therefore inadmissible, escape could not be proven. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

Resort to self-help by a detainee is inherently dangerous to the prisoner, the police, and to the public, as an attempted escape may result in circumstances where there is resort to force either by or against the

detainee. Therefore, in cases of unlawful detainment, it is much preferred as a matter of public policy for counsel or other person to move the court for a detainee's immediate release. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

A finding that the arrest was without probable cause may also support dismissal of an escape charge since an arrest without probable cause does not constitute an authorized arrest which can serve as a predicate for an escape charge where the escape was without force. Chuuk v. Sipenuk, 17 FSM R. 135, 137 (Chk. S. Ct. Tr. 2010).

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

– Expungement of Records

Without more, expungement is not appropriate when the court's order entered pursuant to a plea agreement specifically found sufficient factual basis to render a judgment of guilt against the defendant, and, although imposition of sentence was suspended pursuant to 11 F.S.M.C. 1002(4), the defendant served jail time, was under house arrest, and paid a total of \$14,374.00 to the national treasury. FSM v. Kihleng, 8 FSM R. 323, 324-25 (Pon. 1998).

Expungement of criminal records falls generally within three categories: expungement pursuant to statute, expungement where it is necessary to preserve basic legal rights, and expungement based on acquittal. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

Where the arrest itself was an unlawful one, or where the arrest represented harassing action by the police, or where the statute under which the arrestee was prosecuted was itself unconstitutional, courts have ordered expunction. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

Although expungement calls for a balancing of the equities between the government's need to maintain extensive records in order to aid in general law enforcement and the individual's right to privacy, an acquittal, standing alone, is not in itself sufficient to warrant an expunction of an arrest record. FSM v. Kihleng, 8 FSM R. 323, 325 (Pon. 1998).

As the grant or denial of a motion to expunge the record of a Trust Territory conviction lies solely within the court's discretion, as limited by law, no appearance is deemed necessary by Chuuk as the successor to the Trust Territory of the Pacific Islands government. The court can decide the motion without oral argument because no evidentiary proceeding is necessary, absent credible assertions of grounds, such as lack of competent counsel, innocence of the charges brought, or that the plea was not voluntarily made. Trust Territory v. Edgar, 11 FSM R. 303, 305 & n.1 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court cannot vacate a criminal conviction, based upon a voluntary guilty plea, in order to circumvent the constitutional and statutory proscriptions against felons being candidates for the FSM Congress when the defendant does not now complain that he was not guilty of the crimes, or that he was not afforded due process of law when he was accused of, and then pleaded guilty to, two separate felonies. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court has no power to strike from the public records all evidence of the charges against a defendant, and his convictions, who seeks a way around the constitutional and statutory proscriptions which is unavailable even to one who has been pardoned for his crimes. It will therefore deny

his motion to expunge. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The expungement of criminal records seem to fall generally within three categories: expungement pursuant to statute, expungement where it is necessary to preserve basic legal rights, and expungement based on acquittal. FSM v. Erwin, 16 FSM R. 42, 43 (Chk. 2008).

A defendant, having pled guilty and been sentenced, does not fit into the category of expungement cases where the defendant was never convicted, and when she does not allege that her conviction stems from the unlawful conduct of law enforcement agents she does not fit into another situation where courts have exercised an inherent power to expunge records. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge or seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branch since that would implicate separation of powers concerns. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

When the defendant has pled guilty and been sentenced and any statement about the effect on her possible enrollment in a nursing school is, at this time, premature and purely speculative, the case is unlike those extraordinary and unusual cases where the remedy of expungement has a logical relationship to the injury to the defendant and the court has balanced the government's need for the records with the harm to the person that results from the government's maintaining the records. This right is a narrow one but can be used to vindicate rights secured by the Constitution or statute. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

Expunction of a criminal record can be applied 1) pursuant to statute;(2) where necessary to preserve basic legal rights, and 3) based on acquittal. In re Suka, 18 FSM R. 554, 556 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court will deny a motion to expunge because it has no power to strike from the public records all evidence of the charges against (and the convictions of) a defendant, who seeks a way around the constitutional and statutory proscriptions which is unavailable even to one who has been pardoned for his crimes. In re Suka, 18 FSM R. 554, 556 (Chk. S. Ct. Tr. 2013).

While a person's assertion that, given his rehabilitation over time and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). In re Suka, 18 FSM R. 554, 556-57 (Chk. S. Ct. Tr. 2013).

Although a criminal record burdens a person with social stigma and potential discrimination by prospective employers, absent the presence of a statutory infirmity in the underlying criminal proceeding, or an illegality in the arrest and following proceedings, the mere impediment to a person's ability to run for an office is insufficient to reach the threshold for a violation of a basic legal right. The qualifications for placing a name on the ballot were determined by Congress and the FSM Constitution, and an expunction, merely to meet the prescribed requirements, would not fall under the category of rights expunction may be used to preserve. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

Jurisdictions that are properly able to invoke the authority to expunge derive the power from a relevant statute. An enabling Chuuk state statute would be necessary to effectuate an expunction, but no such statute currently exists in Chuuk. If the legislature had intended for the Chuuk State Supreme Court to have the power to expunge a record, the legislature would have specifically provided that power. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

When state law does not provide for expunction of a criminal record, state courts may only consider expunction requests using ancillary jurisdiction, which is a court's jurisdiction to adjudicate claims and proceedings that arise out of a claim that is properly before the court. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge and seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branches since that would implicate separation of powers concerns. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

Irrespective of the source of power, courts relying on inherent judicial authority to expunge criminal records specify that said power should be sparingly used and no court has held that the government's interest in maintaining accurate criminal histories can be outweighed by an individual's right to privacy in any but exceptional circumstances. In re Suka, 18 FSM R. 554, 557-58 (Chk. S. Ct. Tr. 2013).

Absent explicit authorization from the Chuuk Legislature, the judiciary has no power to expunge a criminal record. The Chuuk State Supreme Court has generally regarded expunction of criminal records as a matter of legislative prerogative that may only be granted or withdrawn by the legislature. Expunction of such records is therefore a matter of legislative discretion, and when a petitioner has not attacked the validity of the underlying conviction, the court must reject his contention that it has inherent jurisdiction over his petition for expunction. In re Suka, 18 FSM R. 554, 558 (Chk. S. Ct. Tr. 2013).

The FSM counterpart to the United States "All Writs Act," 4 F.S.M.C. 117, does not give the court the power to order expungement unless the court already has jurisdiction to do so, and, absent a specific statute or invalid conviction, the court lacks such jurisdiction. FSM v. Innocenti, 20 FSM R. 293, 295 n.1 (Pon. 2016).

Courts can exercise the power to expunge records to preserve basic legal rights only when the defendant's conviction stems from the unlawful conduct of law enforcement agents. In the absence of a statute, a court's jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Innocenti, 20 FSM R. 293, 295-96 (Pon. 2016).

The court lacks the authority to order expungement of the record of a valid and unchallenged conviction even though the defendant has been pardoned since a pardon does not create the factual fiction that the crime was never committed. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

Since the FSM Supreme Court does not have the power to alter or amend another country's entry requirements, the United States could still decide to require a person to apply to its Embassy in order to travel to United States territory even if the court ordered expungement of FSM records because the court cannot order the alteration of another country's records. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

A court's power to expunge criminal records falls into three general categories: 1) expungement pursuant to a statute, 2) expungement when it is necessary to preserve basic legal rights, or 3) expungement based on an acquittal, although, in the case of an acquittal, the court doubts that expungement can be ordered based solely on the acquittal. FSM v. Fritz, 20 FSM R. 596, 599 & n.1 (Chk. 2016).

No FSM statute authorizes the expungement of records. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Courts can exercise the power to expunge records to preserve basic legal rights only when the defendant's conviction stems from the unlawful conduct of law enforcement agents. In the absence of a statute, a court's inherent power is limited to expunging the record of an unlawful arrest or conviction, or to correcting a clerical error. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

If a Presidential pardon automatically entitled the pardoned person to an expungement of his criminal record, then the executive branch would have the power to interfere with the record-keeping of another co-equal branch of government (the judicial branch) while also preventing still another co-equal branch of government (Congress) from access to the judicial branch's records that would assist it in its constitutional duty to be the sole judge of the qualification of its members. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

Whether a pardoned felon's records are expunged cannot turn on the fact that he pled not guilty and later appealed while another pardoned felon who pled guilty is denied expungement. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

The court, following the Judicial Guidance Clause's mandate that its decisions be consistent with the Constitution, can order an expungement of criminal records of a pardoned felon, only if Congress grants it the authority to do so. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

– Falsification

To be criminally liable under 11 F.S.M.C. 524(1)(c) it is enough that the accused invite reliance on any writing which he knows to be lacking in authenticity. The statute does not require that he himself make the writing that is lacking in authenticity. FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

– Felonies

A felony is an offense punishable by more than one year in prison and a misdemeanor is an offense punishable by more than 30 days imprisonment and up to one year. FSM v. Wainit, 12 FSM R. 105, 109 n.2 (Chk. 2003).

Under previous law, a felony is an offense which may be punished by imprisonment for more than one year; a petty misdemeanor is an offense which may be punished by imprisonment for not more than 30 days; and every other offense is a misdemeanor. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

Misdemeanors are offenses punishable by imprisonment for more than 30 days up to one year. Felonies are offenses punishable by more than one year in prison. FSM v. Wainit, 13 FSM R. 532, 536 n.1 (Chk. 2005).

A felony under the Kosrae State Code is an offense punishable by imprisonment for a period of more than one year and a category one felony can carry a sentence of imprisonment not exceeding or equaling ten years, a fine not exceeding twenty thousand dollars, or both. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

Under Pohnpei state law, a felony is defined as a crime or offense that may be punishable by imprisonment for a period of more than one year, and every other crime is a misdemeanor. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

– Filings

The general court order concerning facsimile transmission rejected indiscriminate filing by fax because it concluded that an effort to accommodate counsel by accepting filing through the use of fax would impose an undue burden upon the clerks and could also result in additional paperwork, expense, duplication efforts, and confusion. Therefore, filing by fax is permitted only by order of a justice given for special cause. FSM

v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

The general court order authorizing fax filing for special cause is not an excuse to wait for the filing deadline and then fax the papers to the court because waiting to the last minute so that it can then be faxed does not constitute "special cause." FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

General Court Order 1990-1 does not apply to filing by facsimile transmission in civil cases because the (later promulgated) applicable portion of Civil Procedure Rule 5(e) has superseded it. It may retain some vitality in criminal cases since the criminal rules do not contain a provision concerning fax filing. However, Civil Rule 5(e)'s pertinent part is identical to section 2 of General Court Order 1990-1. Goya v. Ramp, 13 FSM R. 100, 105 & n.3 (App. 2005).

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).

A court may, at its discretion, enlarge the time for filing for cause shown if the enlargement request is made before the expiration of the time period in which the papers are to be filed, and if the enlargement request is made after the expiration of the original time period in which the papers were due, then the court may grant an enlargement only upon a showing of excusable neglect. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

A prosecutor cannot show excusable neglect for a motion to enlarge time when he had enough time to file a request for enlargement before he left on his trip and when, failing that, another admitted attorney in the same office could have filed a request for enlargement before the time to oppose a defendant's motion had expired, but did not. Thus, even though if the prosecution had moved to enlarge time before the time period expired, the assigned prosecutor's previously scheduled trip would have qualified as cause shown, it did not qualify as excusable neglect under the circumstances, and the prosecution's motion to enlarge time will be denied. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

– Forgery

Forgery, as defined by the Kosrae State Code, is falsely making or materially altering a writing or document of apparent legal weight and authenticity, with intent to defraud, and is classified as a category one felony. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

– Fraud

When existing facts having a material bearing upon the desirability of a proposed investment are intentionally misrepresented, the investor has been defrauded, even if the person who has induced the investors by false statements fervently hopes that related promises of future actions, developments or profitability will be fulfilled. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

When a person makes statements calculated to create a false impression as to value in order to induce those who heard him to give him their money, and the statements did have that result, the person has purposely obtained property through deception within the meaning of 11 F.S.M.C. 932(6). Wolfe v. FSM, 2 FSM R. 115, 121 (App. 1985).

In order to find an accused guilty of cheating, the court must find that the accused: 1) unlawfully obtained the property, services or money of another; 2) by false pretenses, knowing the pretenses to be false; and 3) with the intent thereby to permanently defraud the owner thereof. Chuuk v. Robert, 16 FSM R. 73, 76, 81 (Chk. S. Ct. Tr. 2008).

When the accused obtained travel fund monies for a purpose not authorized by law, which was his taking of funds from the Speaker and staff travel fund for the expressed purpose of a medical referral; when the accused represented that he was entitled to the funds through use of the representation fund account and the Speaker and staff travel fund account; when the accused altered the travel authorization and represented to the Department of Administrative Services that he was authorized to receive the funds in the altered travel authorization; and when the accused intended to permanently defraud the funds' owner seeking and obtaining public funds for an impermissible purpose and intended to convert the funds by taking an unauthorized amount of funds and failing to return or account for the funds, the accused is guilty of cheating. Chuuk v. Robert, 16 FSM R. 73, 81-82 (Chk. S. Ct. Tr. 2008).

Under the Kosrae State Code, a prosecution for a felony must be commenced within three years after the alleged crime was committed but an extension of the statute of limitations is allowed when an element of the offense is fraud. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

– Fugitives

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

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).

Delay due to a co-defendant's unavailability is not attributed to the government, and this includes the time a co-defendant was a fugitive. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

When the facts are sufficient to show an accused's knowledge of the charges against him and for the court to infer that he intended to avoid further prosecution by leaving the jurisdiction, the accused is therefore a fugitive. FSM v. Jacob, 15 FSM R. 439, 441-42 (Chk. 2007).

The fugitive disentitlement doctrine is not limited only to appellate review of a criminal conviction or of a related civil forfeiture. It may also apply in trial court proceedings, such as pretrial motions made by fugitives in the trial courts. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

The fugitive disentitlement doctrine has come to signify the unwillingness of courts to waste time and resources exercising jurisdiction over litigants who will only comply with favorable court rulings. Simply stated, a fugitive's absence does not entitle him to an advantage. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

The doctrine of fugitive disentitlement rests on the principle of mutuality. The rationale is that a court should not afford a fugitive who is unwilling to submit to its jurisdiction and stand trial for an alleged crime, the opportunity to improve his position by challenging the jurisdiction of the court. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A fugitive, in bringing motions, is trying to obtain favorable rulings from the court without risking any burden that may flow from an adverse ruling. If the rulings are unfavorable to him, he will remain a fugitive. Then, if the government wishes to pursue prosecuting him, it must go to the effort and expense of extraditing him assuming he has not fled to a jurisdiction with which the FSM does not have an extradition agreement. That bestows a benefit on the fugitive and violates the principle of mutuality and reaching the merits of a fugitive's pretrial motions may encourage others in the same position to take flight from justice. Thus his motions will be denied without prejudice. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

A fugitive's pending motions will all be denied without prejudice. Once he has submitted to the court's jurisdiction by returning, he may reurge any motion not previously denied on the merits. The fugitive will be afforded due process and his right to a fair trial once he has returned. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

To be considered a fugitive, a person must have some knowledge of the charges against him or her and have then left or remained outside the court's jurisdiction. From that, the court may infer that the accused's intention is to avoid prosecution. He or she is then a fugitive. FSM v. Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

When the court cannot find that an accused has any knowledge that he has been charged with an offense, or that he left the FSM in anticipation that he was about to be charged, or that he has even communicated with the counsel that now appears on his behalf, it is doubtful that the fugitive disentitlement doctrine could be applied to his counsel's motion. FSM v. Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

– Homicide

In a criminal prosecution under 11 F.S.M.C. 301, where defendant's overt actions indicated their intention to aid those involved in attacks, and when it was reasonably foreseeable by them that somebody might be fatally injured as a probable consequences of the beatings that they aided and abetted, they may be held legally responsible for the death resulting from the assaults even if the defendants did not actually intend that the victims be killed or seriously injured. Engichy v. FSM, 1 FSM R. 532, 548 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

When the defendant is fighting another person and uses a wrestling hold which causes the death of the other person, but when the court is unable to find that reasonable person would be aware that such a hold, as applied, would create a substantial risk of death, the defendant is not guilty of the crimes of manslaughter or negligent homicide. FSM v. Raitoun, 1 FSM R. 589, 590-92 (Truk 1984).

Under the law of the Federated States of Micronesia, manslaughter is a lesser degree of homicide included within the charge of murder. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

Defendant who fails to request consideration of a lesser offense normally may not successfully appeal from a conviction arrived at without such consideration, but where all elements for murder exist but homicide was caused under extreme mental or emotional disturbance for which there is reasonable explanation or excuse, defendant is entitled to be convicted of manslaughter rather than murder, without regard to whether request for consideration of manslaughter was made by either counsel. Runmar v. FSM, 3 FSM R. 308, 319 (App. 1988).

That a victim/aggressor scuffled with the defendant and chased the defendant with a rock in his hand before the defendant fatally stabbed the victim/aggressor is not such a mitigating factor as automatically to compel the reduction of a charge from murder to manslaughter. Bernardo v. FSM, 4 FSM R. 310, 315 (App. 1990).

A trial court must give specific consideration to the possibility of manslaughter where there is evidence suggesting that the person who caused a death was under the influence of mental or emotional disturbance and if the trial court then finds guilt for murder rather than manslaughter, it must make a specific finding, either orally or in writing, explaining why 11 F.S.M.C. 912 is not applicable. Bernardo v. FSM, 4 FSM R. 310, 315 (App. 1990).

Manslaughter is committed if death is caused by one acting recklessly. Robert v. FSM, 4 FSM R. 316, 318 (App. 1990).

If the acts which caused the death were in willful disregard of the attendant circumstances and unjustifiably created excessive risks, the acts need not have been done with the purpose of causing death or with substantial certainty that death would result. Robert v. FSM, 4 FSM R. 316, 319 (App. 1990).

A necessary element of proof in a prosecution for the homicide of an infant is that the infant was born alive. Welson v. FSM, 5 FSM R. 281, 285 (App. 1992).

In the absence of evidence as to how much alcohol the defendant drank and how it affected his conduct, the court need not determine whether the defendant's intoxication negated his ability to form the intent to kill. Jonah v. FSM, 5 FSM R. 308, 312 (App. 1992).

To act while disregarding something willfully or intentionally requires that the actor be aware of the information disregarded. Thus a conviction for reckless manslaughter may be upheld only if the circumstances known by the defendant at the time of acting created a substantial and unjustified risk of death and he nonetheless willfully and irresponsibly accepted this risk by acting in a manner considerably different from the conduct that might be expected of a well-meaning, law-abiding citizen. Alouis v. FSM, 6 FSM R. 83, 86 (App. 1993).

In assessing whether conduct which has caused death was reckless, courts must also determine whether the conduct was unjustifiable. Alouis v. FSM, 6 FSM R. 83, 88 (App. 1993).

Reckless manslaughter as defined in the FSM Code is intended to apply to willfully irresponsible, life-threatening behavior, actions which grossly deviate from the standards of conduct that a law-abiding person in the actor's situation would observe. Alouis v. FSM, 6 FSM R. 83, 88 (App. 1993).

In the Kosrae Code there are two alternative mens rea elements under which the killing of another can be second-degree murder – the killing is either done with malice aforethought, or it is done while perpetrating or attempting to perpetrate a felony other than one which would statutorily incur liability for first-degree murder. Proof of either one of the two alternative mens rea elements is sufficient for a second-degree murder conviction. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

The primary function of the felony-murder doctrine is to relieve the prosecution of the necessity of proving, and the trier of fact of the necessity of finding, actual malice on the part of the defendant in the commission of the homicide. The malice involved in the perpetration or attempted perpetration of the felony is transferred or imputed to the commission of the homicide so that the accused can be found guilty of murder even though the killing is accidental. Palik v. Kosrae, 8 FSM R. 509, 514 (App. 1998).

The offense of aggravated assault is included in the resulting homicide. Accordingly, an aggravated assault conviction cannot be used to support a felony-murder conviction. Palik v. Kosrae, 8 FSM R. 509, 515 (App. 1998).

Malice is always presumed when a person deliberately injures another, and if a person uses a deadly weapon on another maliciousness must be inferred. Thus the malice aforethought required for a second-degree murder conviction may correctly be inferred from the deliberate use of three dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 515-16 (App. 1998).

A sentence of six years incarceration is not unduly severe on a manslaughter conviction. It may even be considered lenient. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. This can be broken down into five separate elements which the government must prove beyond a reasonable doubt: 1) the defendant, 2) unlawfully caused, 3) the death, 4) of another human being, 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. With respect to the second element, whether a defendant's "unlawfully caused" the victim's death, the defendant's acts in self-defense render their actions lawful or excusable. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

Self-defense is not an affirmative defense and the burden of proof remains with the prosecution to prove each element of the offense when self-defense is asserted. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants' acts were in self-defense, but they employed unreasonable force, there is no compulsory reduction of a murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If the court finds that the defendants killed the victim while in a state of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse, the court will find them guilty of, at most, manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

A finding that the victim clearly was the aggressor and that one defendant's intervention to aid his brother adds additional weight to his claim of provocation, is sufficient to suggest that the defendants may have been acting under the influence of mental or emotional disturbance. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

Unless the court finds that extreme emotional or mental disturbance existed at the time of the killing, there is no basis for reducing the murder charge to manslaughter. Chuuk v. William, 15 FSM R. 483, 489 (Chk. S. Ct. Tr. 2008).

The reasonableness of a defendant's response to a provocation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be. The passion aroused from the provocation need not be anger or rage, but can be any violent, intense, high-wrought, or enthusiastic emotion other than revenge. However, if sufficient time has elapsed between the provocation and fatal blow for passion to subside and reason return, the killing is not voluntary manslaughter. Chuuk v. William, 15 FSM R. 483, 489-90 (Chk. S. Ct. Tr. 2008).

If from any circumstances whatever, it appears that the defendant reflected, deliberated, or cooled any time before the fatal stroke was given, or if there was enough time or opportunity for a reasonable person to cool, the killing will amount to murder, being attributable to malice and revenge, and not to mental disturbance. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

If a reasonable fact finder could find beyond a reasonable doubt that during the extended period between the victim's initial assault and the defendants' finally relenting from their beating of him, during which the defendants had ample time to observe that the victim was suppliant, injured and helpless, then either the defendants had, in fact, regained their senses or reasonable persons in the defendants' situation would have cooled off and regained their senses. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

For the purposes of motions for acquittal, the government has presented sufficient evidence of the requisite intent to satisfy that element of the murder charges when the defendants' use of dangerous weapons to repeatedly beat the victim alone creates a strong inference of the requisite intent and when there is evidence sufficient to support the specific intent requirement for murder based on the prolonged duration of the beating and other attendant circumstances arising after the victim's initial assault. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

A person commits murder if he unlawfully causes the death of another human being intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. Chuuk v. William, 15 FSM R. 498, 500 (Chk. S. Ct. Tr. 2008).

A person commits the offense of manslaughter if he causes the death of another human being when acting recklessly; or a homicide which would otherwise be murder is committed under influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believes them to be. Chuuk v. William, 15 FSM R. 498, 500 (Chk. S. Ct. Tr. 2008).

In order to convict defendants on the counts of murder, for each defendant, the court must be convinced beyond a reasonable doubt of each element of the offense. The government must therefore prove: 1) the defendants 2) unlawfully caused 3) the death 4) of another human being 5) either intentionally or knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. Chuuk v. William, 15 FSM R. 498, 501 (Chk. S. Ct. Tr. 2008).

Although it is apparent that one defendant and not the other struck the fatal blows, when the defendants acted together to kill the victim by continuing to beat the victim after he was helpless and by the other holding the victim down when the one struck the fatal blows, the evidence established beyond a reasonable doubt that it was defendants who caused the victim's death. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When, well after defendants subdued the victim and rendered him defenseless, they continued to beat him, use of force against the victim by a defendant claiming self-defense was not reasonably necessary for his self-defense because he did not face an imminent threat of serious bodily injury or death from the victim when the victim was killed. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

Where the defendants together pinned the victim to the ground, rendering him defenseless, and used, respectively, a fresh coconut husk and fist-sized rock, to repeatedly strike him when he was obviously defenseless and where the defendants had long since rendered him helpless when the fatal blows were struck, such circumstances prove murderous intent. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When evidence of self-defense has been presented, the court must determine whether the circumstances surrounding the self-defense claim were sufficient to show that the defendant was provoked, with reasonable explanation or excuse, to commit the killing under a state of extreme emotional or mental distress. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

If the attack on one defendant provoked his brother, with reasonable explanation or excuse, to use

force against the victim, and if either defendant killed the victim while in a state of extreme emotional or mental disturbance due to sufficient provocation, the murder charge against him must be reduced to manslaughter. The provocation must also have existed up until the time the victim was killed and the defendants did not have an opportunity to cool off. Chuuk v. William, 15 FSM R. 498, 502 (Chk. S. Ct. Tr. 2008).

When both defendants were acting under extreme mental or emotional disturbance for which they had a reasonable excuse or explanation at the time they caused the victim's death, although each of the elements of murder was met, each defendant's extreme mental or emotional disturbance at the time of the killing compels reduction of the murder charges to manslaughter. Chuuk v. William, 15 FSM R. 498, 503 (Chk. S. Ct. Tr. 2008).

– Human Trafficking

– Immunity

The granting of immunity is traditionally a matter within the powers of the prosecution. This is so because grants of immunity call for the balancing of numerous factors and weighing of important prosecutorial policies. Engichy v. FSM, 1 FSM R. 532, 551 (App. 1984).

The FSM Supreme Court may have the power to grant immunity, but the granting of immunity is traditionally a matter of executive or prosecutorial discretion. In the Federated States of Micronesia, where there is no right to trial by jury and the trial judge is the trier of both fact and law, it seems especially unwise for the court to play an aggressive or active role concerning grants of immunity. Engichy v. FSM, 1 FSM R. 532, 552 (App. 1984).

Courts generally have recognized that they should grant immunity only under extraordinary circumstances. Engichy v. FSM, 1 FSM R. 532, 552 (App. 1984).

– Information

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution is required to establish those specific facts in addition to a violation of the statute. FSM v. Boaz (I), 1 FSM R. 22, 24 (Pon. 1981).

An information which claims that the defendant entered a building for the purpose of "fighting" rather than "assaulting" a person within the building does not render the information inadequate for a conviction. A desire to fight carries with it a desire to commit an assault. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of the greater punishment available under 11 F.S.M.C. 914(3)(b). Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the Information if the actual violation is different from the one alleged. Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

When an information sufficiently apprises the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead his case as a bar to future prosecutions for the same offense, it is generally sufficient that an information set forth the offense in words of the statute itself. Laion v. FSM, 1 FSM R. 503, 516-17 (App. 1984).

The language of Rule 7(c) of the FSM Supreme Court Rules of Criminal Procedure has been interpreted by other courts as permitting the prosecution to charge commission of a single offense by different means, or by charging in the conjunctive actions prohibited disjunctively in a statute. Laion v. FSM, 1 FSM R. 503, 517 (App. 1984).

The FSM Supreme Court Rules of Criminal Procedure were designed to avoid technicalities and gamesmanship in criminal pleading. They are to be construed to secure simplicity in procedure. Convictions should not be reversed, nor the information thrown out, because of minor, technical objections which do not prejudice the accused. Laion v. FSM, 1 FSM R. 503, 518 (App. 1984).

11 F.S.M.C. 301 is one of a set of sections in Chapter 3 of the National Criminal Code specifying general principles of responsibility which apply implicitly to all substantive offenses but do not themselves enunciate substantive offenses. These are not subject to "violation" and are therefore not reached by Rule 7 of the FSM Rules of Criminal Procedure. These general principles are deemed applicable to all crimes, and mere failure to restate them in an Information is not a failure to inform or a violation of due process. Engichy v. FSM, 1 FSM R. 532, 542 (App. 1984).

Dropping one count from a criminal information does not prevent the prosecution from proving that count as an element of other pending charges. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

Criminal defendants have the constitutional right to be informed of the nature of the accusation against them. This protection is implemented through Criminal Rule 7(c)(1), which requires that an information must "be a plain, concise and definite written statement of the essential facts constituting the offense charged." An information should not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995).

The fundamental purpose of the information is to inform the defendant of the charge so that he may prepare his defense, and the test for sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated in the particular information. Another purpose is to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had. FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995).

The information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense. Common sense will be a better guide than arbitrary and artificial rules, and the sufficiency of the information will be determined on the basis of practical rather than technical considerations. In an information each count should stand on its own although facts alleged therein may be incorporated by reference. This is true as to each defendant. FSM v. Xu Rui Song, 7 FSM R. 187, 189-90 (Chk. 1995).

An information that is sufficient for one co-defendant may be insufficient and defective as to another. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

An information that, as a practical matter, is not sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, or to inform the court of what alleged acts or omissions of this particular defendant result in criminal liability is defective, and may be dismissed without prejudice. FSM v. Xu Rui Song, 7 FSM R. 187, 190 (Chk. 1995).

A person who allegedly aided and abetted another to commit an offense must be specifically charged with aiding and abetting in the information. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A statute not cited in the information and not mentioned by the prosecution until closing argument cannot be the basis of criminal liability. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

Although the government is not precluded from charging and trying, in one information, violations of two or more separate provisions of the FSM codes which arise from the same course of conduct, but when the case involves conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) the government cannot also seek to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes. FSM v. Edwin, 8 FSM R. 543, 546 (Pon. 1998).

Relevant provisions of Title 12 of the Trust Territory Code regarding traffic citations' definition and procedure continue in effect as Chuuk state law on criminal procedure, as long as these provisions have not been amended or repealed and are consistent with the Chuuk Constitution. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A "citation" is a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation. It contains a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which an arrest warrant may be issued. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

The court may accept the statement of the charge or charges in a citation or a copy thereof in place of an information in any misdemeanor tried. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

In accepting the use of a citation in place of a complaint or information in an action, a court must review the statement of charge or charges that appear on the citations in conformity with the nature and contents of an information or complaint. The citation must be a plain, concise and definite written statement of the essential facts constituting the offense charged, and must state for each count of the citation, the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

Police officers' authority to issue citations in lieu of complaints or information is provided by law. In any case in which a policeman may lawfully arrest a person without a warrant, he may instead, subject to such limitations as his superiors may impose, issue and serve a citation upon the person, if he deems that the public interest does not require an arrest. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

When defendants have been charged in a citation with misdemeanor offenses, it is lawfully appropriate for the court to pursue the charges in litigation in place of complaints or information because police officers' issuance of citations to defendants in lieu of complaints or information for violation of Chuuk State Motor Vehicle Code provisions is authorized. Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

The statements that appear on citations fulfill the essential requirement of that of a complaint or information in a criminal case as provided in Chuuk Criminal Procedure Rule 7(c)(1). Chuuk v. Dereas, 8 FSM R. 599, 602 (Chk. S. Ct. Tr. 1998).

The purpose of an information, summons or warrant is to inform the defendant of what he is called upon to defend. Chuuk v. Defang, 9 FSM R. 43, 45 (Chk. S. Ct. Tr. 1999).

An information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

The purpose of a criminal information is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information that is deficient in these respects may be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit

standards for those who apply them. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

No probable cause to believe that a criminal offense has been committed exists when the defendants' alleged conduct as set out in the information has not been made criminal under any statute, rule, or regulation to which the court's attention has been directed. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

The use of affidavits to support the filing of a criminal information does not violate a criminal defendant's right to confrontation. The defendant will have the opportunity to confront the affiants if they are called as witnesses at trial by either the government or the defendant. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The court is authorized to issue an arrest warrant or penal summons if the information is supported by one or more written statements under oath showing probable cause. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

The statute, 12 F.S.M.C. 204, and the rule, FSM Crim. R. 4(a), applying to criminal complaints cannot be followed when no complaint was ever filed and when the government earlier filed a criminal information. FSM v. Wainit, 12 FSM R. 376, 383-84 (Chk. 2004).

When applying for an arrest warrant, the person giving evidence under oath by telephone must physically appear before someone who can identify the witness and administer the oath. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Since an information is not made under oath, that would leave only affidavits as the means to show the required "probable cause under oath" for informations. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

Since the statute and possibly the rules require sworn written statements to be filed with the information, when no such statements were attached, motions to dismiss on this ground will be granted. These dismissals are not on the merits. Neither defendant has been put in jeopardy. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

The dismissal of a criminal case because of a statutorily defective information is without prejudice. FSM v. Wainit, 12 FSM R. 376, 384 (Chk. 2004).

When a criminal information is not supported by written statement(s) under oath showing probable cause to the court's satisfaction before a penal summons (or an arrest warrant) is issued, there is no ground stated that would warrant dismissal of the information if there is nothing before the court that indicates that the information is not a "plain, concise and definite statement of the essential facts constituting the offense." But the summonses issued pursuant to such an information are improperly issued and the resulting initial appearances are as a consequence defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

Under 12 F.S.M.C. 210, the lack of sworn, written statements showing probable cause makes the issuance of the summonses defective. It does not make the information defective. FSM v. Kansou, 13 FSM R. 48, 50 (Chk. 2004).

When the differences between two informations are sufficient to show that the prosecutor who signed the new information, had exercised the considered, independent judgment that the court asked to be present in any refiled information, that most of the wording was drawn from the earlier information, presumed invalid for the purpose of the motion, is not a sufficient ground to invalidate the information. That a new information is based on or drawn from an earlier invalid information does not invalidate the new information. FSM v. Wainit, 13 FSM R. 433, 439 (Chk. 2005).

When police officers viewed the defendant struggling and fighting and also heard the defendant swearing and yelling offensive words, based upon that conduct alone, the officers had reasonable grounds to believe that the defendant had committed one or more criminal offenses, including drunken and

disorderly conduct, and disturbing the peace. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Following an arrest of an accused, related or different criminal offenses may be charged in the information, based upon further investigation and research conducted by the state. Kosrae v. Jonithan, 14 FSM R. 94, 97 (Kos. S. Ct. Tr. 2006).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

Although the government filed a motion to clarify that the one felony charge included the interference with the civil right to vote in not only the national election held March 2, 1999, but also the Chuuk state election held the same day, but since the information gave clear notice only that the felony charge arose from the national election, the government had to prove that the defendant unlawfully interfered with the right to vote in a national election because the information's allegations alleging a criminal violation must be proven in order to obtain a conviction. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

When the information cites 11 F.S.M.C. 313(2)(c), but quotes the language of 313(2)(b) as the offense charged, the "(c)" in the information is considered a minor typographical error that does not prejudice the accused. FSM v. Nifon, 14 FSM R. 309, 315 n.1 (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).

Although the prior criminal code provided that no person could be convicted of aiding and abetting unless the information specifically alleged that the defendant aided and abetted and the information provided specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense, that provision was eliminated when the current criminal code was enacted. It is thus no longer necessary for the information to recite each specific act each alleged aider and abetter allegedly committed. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the offense charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

When, although the language of counts six and eight was identical, the two acts of anal penetration were separated by an act of battery and the defendant penetrated the victim three separate times and although counts six and eight should have included distinguishing language, the duplication in the information, in itself, did not compromise the defendant's constitutional right against double jeopardy. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

An argument that the name of the "Secretary of the Department of Transportation, Communication and Infrastructure," rather than the name of the "Federated States of Micronesia" should be in the case's caption and that this defect deprives the court of subject-matter jurisdiction over the case is utterly lacking in merit. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609 (Pon. 2007).

By requiring that an information be "filed in the name of the Secretary," Title 19, section 1307 merely

requires that the information filed with the court be signed by the Secretary of the Department of Transportation, Communication and Infrastructure. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

An "information" is an accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office, instead of a grand jury on their oath. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

In the case of a violation of Title 19 of the FSM Code, any information filed with the court must be signed by the Secretary of the Department of Transportation, Communication and Infrastructure and the attorney for the government who is authorized to appear before the court. That information's caption, like all other pleadings filed in criminal matters, will be in the name of the "Federated States of Micronesia." FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

An error in the citation or description or its omission shall not be ground for the dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

Regardless of how the information in this case might have otherwise been captioned, the FSM Supreme Court would not be deprived of its subject-matter jurisdiction over the case since the alleged violations are national offenses and the FSM Supreme Court has exclusive jurisdiction over cases in which the national government is a party. Thus, whether the information was filed in the name of the "Federated States of Micronesia" or "the Secretary of the Department of Transportation, Communication and Infrastructure" the national government would be a party. It is this controlling factor which serves as the basis for the court's subject-matter jurisdiction. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

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).

Although Section 1306(4) of Title 19 of the FSM Code does require notification of the maritime authority in the country where the vessel that the defendant purportedly masters is flagged, that provision of law, like all of section 1306 of Title 19, is not mandatory. The notification requirement imposed by Section 1306(4) is only required if the Secretary has caused an investigation to be undertaken, and only then if the investigation concerns a vessel. But when the only named defendant is an individual, and not a vessel, even if an investigation had been undertaken by the Secretary, there would have been no requirement to notify any foreign maritime authority. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

The government does not have to identify which of the six charges in a criminal information it intends to pursue since it is entitled to pursue multiple claims based on the same act. Chuuk v. Menisio, 15 FSM R. 276, 279 n.1 (Chk. S. Ct. Tr. 2007).

A criminal information must be a plain, concise and definite written statement of the essential facts constituting the offense charged. It must be signed by an attorney for the state and for each count there must be citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated. Allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Menisio, 15 FSM R. 276, 279 (Chk. S. Ct. Tr. 2007).

An information should be sufficiently definite, certain, and unambiguous as to permit the accused to prepare his defense, but an information should not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

When the information is sufficiently definite to put the accused on notice that he is charged with, in his capacity as NNDA Executive Director, being a member of a conspiracy to violate 55 F.S.M.C. 221(2), 55 F.S.M.C. 221(3) and 11 F.S.M.C. 529 and when the court has previously stated that nothing before it indicates that the information is not a plain, concise and definite statement of the essential facts constituting the offense, the accused's motion to dismiss on the ground of defective information will be denied. FSM v. Kansou, 15 FSM R. 373, 380-81 (Chk. 2007).

When the affidavit(s) did not state that the victim was thrown overboard but instead stated that the victim's body was thrown overboard after the victim was shot, the only fair inference that can be drawn from that allegation is that the prosecution alleges that the shooting killed the victim and the defendants are thus on notice that the government alleged that at least one of the offenses the firearm was used for was to commit a homicide. FSM v. Sam, 15 FSM R. 457, 460 n.1 (Chk. 2007).

The Kosrae State Court standard for measuring delay when filing an information and proceeding to trial is that the court presumes that there has been no unnecessary delay if the information is filed within six months of the alleged criminal act, but if the information is filed more than six months after the alleged act, then the prosecution must show that the delay in filing was reasonable or necessary. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

A criminal information will not be dismissed on the ground that it fails to allege that the weapon in question was a handgun of .22 caliber or greater because the information alleges that the defendant possessed a .22 handgun and because a handgun's caliber is irrelevant since 11 F.S.M.C. 1023(5) prohibits the possession of any handgun, regardless of caliber. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

An information's fundamental purpose is to inform the defendant of the charges so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction, and an information deficient in these respects may be dismissed without prejudice. The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When the supporting affidavit specifically alleges that the defendant beat the victim on her head with the handgun, the information's assault allegation is more than adequate and the defendant's ground that the information fails to state with specificity the nature of the crime of assault alleged must be rejected. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When, at no time before closing argument did the defendant object to or seek clarification of the government's charges through a bill of particulars, motion to dismiss for failure to state a claim, or other means, any defect in the information, other than lack of jurisdiction or failure to state a claim, was waived by defendant's failure to raise the issue before trial. Chuuk v. Robert, 16 FSM R. 73, 80 n.7 (Chk. S. Ct. Tr. 2008).

The pleading rules were designed to ensure simplicity of proceedings and to avoid technicalities and gamesmanship. Chuuk v. Robert, 16 FSM R. 73, 80 n.7 (Chk. S. Ct. Tr. 2008).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used in connection with or in aid of the commission of a crime, when the information does not allege what crime or crimes, the firearm was used to help commit, it fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the information should be dismissed for failure to state an offense. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

A prosecution is commenced when an information is filed in court. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A motion to dismiss the information will be denied when the information is sufficiently definite and unambiguous for the accused to be apprised of the charge against him and for him to prepare his defense and when it is sufficiently detailed to enable him to plead the case as a bar to any future prosecution for the same offense. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

An information will not be dismissed on the ground that the supporting affidavit was unreliable when the affidavit was prepared by an investigating officer who based his testimony on his own interviews with witnesses since hearsay statements of witnesses can establish probable cause. Chuuk v. Rotenis, 16 FSM R. 398, 401 (Chk. S. Ct. Tr. 2009).

A criminal information's allegations must be proven in order to obtain a conviction, and it is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Thus, when in an information, one count requires proof of identical allegations (facts and elements) as another count, it would violate a defendant's double jeopardy protection if he were convicted of both and then punished for both. The proper remedy, however, is not to dismiss before trial some counts based on what might happen because the government will not be denied the right to charge the separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. But if, after trial, the court finds the defendant guilty of both counts, a conviction will be entered only on one of those two counts. FSM v. Aliven, 16 FSM R. 520, 530-31 (Chk. 2009).

When, in the information and supporting affidavit or in the material before the court during the pretrial motion hearing, no notice was given the defendants of any act or conduct by either of them that was alleged to constitute aiding and abetting, the aiding and abetting counts against them will be dismissed. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

When notice was given a defendant, and even relied upon by him in his motion, of his alleged conduct to aid and abet, the prosecution will be given time to either amend the information to include that conduct or to dismiss the aiding and abetting counts against him. FSM v. Aliven, 16 FSM R. 520, 532 (Chk. 2009).

A motion to dismiss conspiracy counts will be denied when the affidavit stated the essential facts constituting the charges and was based on the first-hand knowledge of the affiant who was the investigating officer; when the information clearly stated the nature of the acts charged; and when, although the affidavit referred to witness statements that were suppressed, the affidavit also contained a considerable amount of other evidence, including the substance of the affiant's interviews with eye-witnesses, which supported probable cause. Such hearsay statements, if reliable, may support a finding of probable cause for instituting a prosecution. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

An allegation that the defendants "did unlawfully conspire" to do some act is an allegation that there was an agreement since the word "conspire" means to join in secret agreement to do an unlawful or wrongful act or to use such means to accomplish a lawful end. By alleging that the defendants "conspired to" do something, the information alleges that the defendants joined in an agreement. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

An information will not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Suzuki, 17 FSM R. 70, 77 (Chk. 2010).

When the defendant asserts that the investigating officer's affidavit was deficient because it is inconsistent with the date specified in the police report but this argument was not raised in the defendant's pre-trial motions as a challenge to the sufficiency of the affidavit of probable cause and therefore to the extent the defendant contends there was a defect in the information, that objection was waived. Chuuk v. Inek, 17 FSM R. 137, 143 (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).

If before trial a defendant asserts that an affidavit was deficient because the affiant did not indicate the sources of his investigation, and that there was no probable cause to support the allegations regarding the dates of the offense, the court could then have addressed the asserted deficiencies, but when he did not, issues regarding deficiencies in the information were waived. 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).

In a criminal contempt proceeding, an order to show cause (the notice) why someone should not be held in contempt must describe the contempt charged as criminal contempt as required by Criminal Procedure Rule 42(b), which requires that the notice shall state the essential facts constituting the criminal contempt charged, describing it as such. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

When the affidavit in support of the information is simply too vague, it does not contain any evidence or factual information that might lead a cautious person to believe it likely that defendant committed a crime prior to being arrested and searched. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An affidavit's failure to establish probable cause does not affect the information's charging or notice-providing component. An information's fundamental purpose is to inform the defendant of the charges so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When a factually-sufficient information is unsupported by an affidavit showing probable cause but at the motion hearing the State, although neither was the affiant, elicited testimony from an officer involved in the actual arrest and another involved in defendant's search and booking and the arresting officer provided sufficient detail to remedy the affidavit's defects; when the accused was given the opportunity, and in fact did, cross-examine both witnesses; when the court finds their testimony credible and is satisfied that ample probable cause existed for accused's arrest; and when there is nothing before the court to indicate that the accused would in any way be prejudiced if the sworn testimony elicited at the hearing were admitted for the purposes of demonstrating that law enforcement had probable cause to arrest and subsequently search the accused incident to his arrest, at the time he was arrested, the information's charging portion remains unaffected and the accused's motion to suppress will be denied. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

An information is sufficient if it is a plain, concise and definite written statement of the essential facts constituting the offense charged and if it sufficiently apprises the defendant of the charges against which he must be prepared to defend and is sufficiently detailed to enable him to plead this case as a bar to future prosecutions for the same offense. Each count in an information should stand on its own although facts alleged therein may be incorporated by reference, and this is true for each defendant. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

An information must state for each count the citation of the statute, rule, regulation or other provision of

law which the defendant is alleged to have violated. FSM v. Esefan, 17 FSM R. 389, 393 (Chk. 2011).

The mere conclusion that the defendant violated the statute does not supply the necessary factual allegations to charge an offense. The general rule is that an information is insufficient if it states conclusions rather than the facts upon which the conclusions are based. However, such facts need not be stated in detail. FSM v. Esefan, 17 FSM R. 389, 393-94 (Chk. 2011).

Although to establish legal requirements in criminal cases, the court must first consult FSM sources of law rather than begin with a review of other courts' cases, the court may consult U.S. sources for guidance in interpreting an FSM criminal procedure rule when it has not previously construed the rule and the rule is identical or similar to a U.S. counterpart, such as when court has not previously considered some aspects of an information's sufficiency under Criminal Rule 7(c). FSM v. Esefan, 17 FSM R. 389, 394 n.1 (Chk. 2011).

An information must charge all the essential elements of the offense, and, although liberality is the guide in testing an information's sufficiency, this applies to matters of form and not of substance. The omission of an essential element from the pleading cannot be cured by citing the statute. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

If a statute makes it an offense to do a certain act "contrary to law," it is not enough simply to cite the statute and to allege that the act was done contrary to law. The pleading must show what other law was violated, either by a citation or by a sufficient statement of facts. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

An information that charges that a defendant's shotgun possession is "unlawful" omits the essential element of a factual allegation that makes that possession unlawful when it cites a statute that provides that "[n]o person shall manufacture, purchase, sell, possess or carry any firearm, dangerous device, or ammunition other than as hereinafter provided" and several different following provisions create different ways a shotgun's possession could be unlawful and carry varying penalties. FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011).

In assessing the factual specificity of a charging instrument, courts start from the assumption that the defendant is innocent and consequently has no knowledge of the facts charged against him. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

When a count, even reading it together with the facts incorporated by reference and the supporting affidavit, does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

Usually when a defendant challenges whether the supporting affidavit shows probable cause for a charged offense, the prosecution will call witnesses and possibly introduce exhibits in order to firmly establish probable cause for the offense charged since the prosecution has the burden to establish probable cause. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

When there is just barely enough evidence and information in the supporting affidavit sufficiently persuasive to warrant the court to believe it is more likely than not that the violation of the law occurred as charged and that the accused committed that violation, the motion to dismiss the challenged count will be denied. FSM v. Esefan, 17 FSM R. 389, 395-96 (Chk. 2011).

A challenge to a count that is merely a semantical word game must be rejected. FSM v. Esefan, 17 FSM R. 389, 397 (Chk. 2011).

FSM Criminal Rule 12(a) abolishes motions to quash an information. However, since under FSM law any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by pretrial motion under FSM Criminal Rule 12(b), the court will consider a defendant's motion to quash the

information as a Rule 12(b) motion to dismiss the information. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

A criminal information's primary purpose is to inform the defendant of the charges against him so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

The test for whether a particular information is sufficient is whether it is fair to the defendant to require him to defend on the basis of the charge(s) as stated therein. To determine whether an information is deficient, the information and its supporting affidavit(s) must be read together. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

When the three officers' affidavits are sufficient to establish facts which, if proven, may support the defendant's conviction on the charges brought; when the connection between a customs officer and an informant, to the extent that it exists, is not necessary to show probable cause to arrest the defendant; and when the affidavits support the discovery of significant quantities of a leafy substance resembling marijuana in the defendant's backpack, as well as further tests of that substance which revealed that it was marijuana, these affidavits provide probable cause to believe that a crime was committed, and the defendant's motion to dismiss the information will be denied. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

When the affidavit identifies its author as a Chuuk State Public Safety Department police detective and indicates that the detective was assigned to investigate the offenses alleged in the information; when the affidavit does not identify informants but describes facts uncovered during the course of the investigation; and when the defendant admits that the affiant formed his conclusions based upon the alleged victim's representations, the affiant's failure to name sources of information does not render the affidavit defective, in part because the defendant admits that the affiant gathered information directly from the victim. The affidavit does not suffer from multiple layers of hearsay because the affiant identifies himself and attests to personally investigating the criminal violations alleged. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

An information is sufficient if: 1) it is a plain, concise and definite written statement of the essential facts constituting the offense charged; 2) it sufficiently apprises the defendant of the charges against which he must be prepared to defend; and 3) it is sufficiently detailed to enable him to plead the case as a bar to future prosecutions for the same offense. An information must also charge all the essential elements of the offense, and, although liberality is the guide in testing an information's sufficiency, this applies to matters of form and not of substance. FSM v. Sorim, 17 FSM R. 515, 519 (Chk. 2011).

Since the Criminal Procedure Rules are designed to avoid technicalities and gamesmanship in criminal pleading and are to be construed to secure simplicity in procedure, an information will not be thrown out because of minor, technical objections which do not prejudice the accused. The Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions; substantial compliance is sufficient. FSM v. Sorim, 17 FSM R. 515, 519-20 (Chk. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when the court has not previously considered certain aspects of a criminal information's sufficiency under Criminal Rule 7, an FSM criminal procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance. FSM v. Sorim, 17 FSM R. 515, 520 n.1 (Chk. 2011).

Each count in an information should stand on its own although the facts alleged therein may be incorporated by reference, and this is true for each defendant. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

To determine a criminal information's sufficiency, the information and its supporting affidavit(s) must be

read together. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

When the information and supporting affidavits allege that the accused cashed various national government checks that were made payable to fictitious people and that he and his codefendant shared the money thus obtained, those allegations are sufficient to put the accused on notice that the national government claims a legal, equitable, or possessory interest in the funds that the checks were used to obtain and the allegation that the codefendants made checks out to fictitious persons using legitimate travel authorization numbers for other persons and then cashed those checks, dividing the proceeds among themselves, is sufficient to put the accused on notice that the prosecution alleges that the checks were not authorized. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

When the information charges that the accused "invited reliance on these false checks by asking the same be cashed, effectively requesting the financial system and the FSM National Government to accept these false checks as true," and when this charge tracks the statutory language in subdivision 524(1)(c), wherein criminal liability is imposed when a person "invites reliance on any writing which he or she knows to be . . . lacking in authenticity," the accused should not be prejudiced merely because the information cited section 524 instead of subdivision 524(1)(c). FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When construing the meaning of an information, the description of the alleged conduct is far more critical than the information's prefatory language or its citation of a particular provision of a statute. It is the statement of facts in the pleading, rather than the statutory citation, that is controlling, and if an information properly charges an offense under the laws it is sufficient even though the government attorney may have supposed that the offenses charged were covered by a different statute. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When the accused is fully informed of the charge against him and the information contains every element of the charge, the accused will have no basis for relief even if the information cites to the wrong subsection, or if it cites to a section and the specific subsection is omitted. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

Although an information must state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated, an error in the citation or description or its omission will not be ground for the information's dismissal if the error or omission did not mislead the defendant to the defendant's prejudice. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

An information should be drawn with greater care. The prosecution should in all cases specify the particular provision or subsection on which the charge is based. By doing so it will ensure that the defendant receives fair warning of the charge against which he or she must defend and will at the same time avoid unnecessary risks to itself on appeal. But when an information falls short of this desired standard, it is still sufficient if it fairly informs the accused of the charge against him. FSM v. Sorim, 17 FSM R. 515, 521 (Chk. 2011).

When the information alleges that the accused presented checks to merchants knowing that those checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

A conspiracy count is sufficient if it alleges an agreement, and identifies the object towards which the agreement is directed and an overt act. But it is not necessary that the information state the object of the agreement with the detail required of an information charging the substantive offense, and it is not necessary in a conspiracy charge to allege with precision all the elements essential to the offense which is the object of a conspiracy; allegations clearly identifying the offense the defendants conspired to commit are sufficient. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the information could have been drawn with greater care, the accused is not misled to his prejudice because the prosecution failed to cite the statute(s) that the codefendants allegedly conspired to violate, the conspiracy count will not be dismissed. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

An accused is not misled about the underlying crime that he is charged with conspiring to commit when, between the conspiracy count, the facts incorporated therein by reference, and the supporting affidavits, it should be clear that he is charged with conspiring to take, through the use of national government checks with fictitious payees, money from the FSM national government to which neither he nor his codefendant had any rightful claim and when the conspiracy count, the facts incorporated therein by reference, and the supporting affidavits describe the substantive underlying offense with enough specificity to sufficiently apprise the accused of the charges against which he must be prepared to defend and it is sufficiently detailed to enable him to plead the case as a bar to future prosecutions for the same crime. FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011).

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

Since an information's fundamental purpose is to inform the accused of the charges so that he may prepare his defense, the test for sufficiency is whether it is fair to the accused to require him to defend on the basis of the charges as stated in the information. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Generally, an information is sufficient if it adequately apprises the accused of the charges against which the accused must be prepared to defend and if it is detailed enough to enable the accused to plead the case as a bar to future prosecutions for the same offenses. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Since the possession of any handgun is banned, an information charging the illegal possession of a handgun is not deficient when the information does not allege the handgun's exact barrel length, color, caliber, or whether the handgun was a pistol or a revolver. The allegation that an accused possessed a handgun is an allegation that the firearm had a barrel length under twenty-six inches because that is the statutory definition of a handgun. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

Three of the four 11 F.S.M.C. 1003 statutory exemptions for firearms possession are defenses within 11 F.S.M.C. 107 for which the accused has the burden of going forward with sufficient evidence to raise these exemptions as issues although the ultimate burden of persuasion still remains with the government. The prosecution does not have to make the initial showing but ultimately bears the burden of disproving the applicability of the exception when it is properly presented. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

A information is not insufficient because it fails to plead that the handgun the accused allegedly possessed was currently operable. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

The inapplicability of the 11 F.S.M.C. 1003(2) exemption is an essential element of the government's case in a prosecution for unlawful possession of a firearm, and since it is an essential element 11 F.S.M.C. 1003(2)'s inapplicability must be pled. FSM v. Meitou, 18 FSM R. 121, 128-29 (Chk. 2011).

An information must charge all the essential elements of the offense, when it does not include all the essential elements constituting the offense that the prosecution has charged, it must be dismissed. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

An information charging firearms possession is sufficient if it or the supporting affidavit contains an allegation that negates any one of the three 11 F.S.M.C. 1003(2) requirements and the prosecution's proof at trial is sufficient if it negates beyond a reasonable doubt any one of the three requirements. FSM v.

Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

If an information charging handgun possession or its supporting affidavit contains allegations from which it may be inferred that the 1003(2) exemption is inapplicable, it is sufficient. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A supporting affidavit's averment that the accused had been drinking and was openly displaying the handgun at the public market is viewed as just barely enough to give the accused notice of the essential element of the charges against him that the 11 F.S.M.C. 1003(2) exemption does not apply because in the appellate court's view, an intoxicated defendant displaying a firearm in public is inconsistent with the 1003(2) exemption because it is inconsistent with a claim that the accused was keeping the handgun as a curio, ornament, or a piece with historical value. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

The test for a particular information's sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge stated therein. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

To determine whether an information is deficient, the information and its supporting affidavit must be read together, and allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

If, when reading the information and supporting affidavit together, it is apparent that there are sufficient facts to give notice to the defendant that he is being charged with allegedly running over a certain victim, such notice is enough to allow him to prepare his defense. Chuuk v. Akapito, 19 FSM R. 13, 14-15 (Chk. S. Ct. Tr. 2013).

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

A criminal defendant is not in danger of being subjected to multiple punishments in the same prosecution until the defendant has been found guilty. A pretrial motion raising a double jeopardy claim of multiple punishments is premature because the defendant may be acquitted on one or all of the charges. Thus, multiple charges in an information is not a defect in the information and is not a claim that is required to be made before trial or it will be deemed waived. A defendant's multiple punishment double jeopardy claim is a claim that cannot be raised before trial but may be raised after guilty findings for more than one offense. Benjamin v. Kosrae, 19 FSM R. 201, 208 (App. 2013).

Under FSM Criminal Rule 7(d), the court has the authority to strike a surplusage from the information. FSM v. Kimura, 19 FSM R. 617, 619 (Pon. 2014).

A criminal information's primary purpose is to inform the defendant of the charges against him so that

he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction. An information deficient in these respects may be dismissed without prejudice. FSM v. Ehsa, 20 FSM R. 106, 108 (Pon. 2015).

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all the essential elements of the offense, although this applies to matters of form and not of substance. FSM v. Ehsa, 20 FSM R. 106, 108-09 (Pon. 2015).

An information will not be thrown out because of minor, technical objections which do not prejudice the accused because the Criminal Procedure Rules do not countenance the practice of fine combing or nit picking a criminal information for verbal and technical omissions. Substantial compliance is sufficient. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

To determine whether an information is deficient, the information and its supporting affidavit must be read together. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

When the supporting affidavit refers to "Governor Ehsa"; when paragraph 1 of the information states that "the defendant, John Ehsa," is an FSM citizen and a Pohnpei resident; when paragraph 4 refers to the "defendant, the Governor of the State of Pohnpei" and paragraph 5 quotes the court order, whose alleged violation gave rise to this criminal case, as enjoining, among others, "John Ehsa, in his capacity as Governor," that leaves no doubt that the defendant named as John Ehsa in paragraph 1 of the Information is the John Ehsa who is the Governor of Pohnpei. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

A criminal case is not a civil action where a person might appear in his official capacity, or his individual capacity, or both. In a criminal case, a person can only be prosecuted as an individual regardless of what capacity he was acting under while committing the acts that gave rise to the prosecution. FSM v. Ehsa, 20 FSM R. 106, 109 (Pon. 2015).

When the charges are pled in the disjunctive – or – so that the prosecution only has to prove one of several methods of committing the crimes charged; when the counts are very clear about the defendant's conduct for which the prosecution seeks to hold him criminally liable; and when the counts clearly state the act(s) that the defendant is accused of committing that allegedly give rise to criminal liability, the information is sufficient to permit the defendant to prepare his defense and it is fair to require him to defend on the basis of the charges as pled. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution must establish those specific facts in addition to a violation of the statute. Lee v. Kosrae, 20 FSM R. 160, 165-66 (App. 2015).

The test for a particular information's sufficiency is whether it is fair to the defendant to require him to defend on the basis of the charge as stated therein. Liberality is the guide in testing an information's sufficiency in charging all of the offense's essential elements, although this applies to matters of form and not of substance. FSM v. Itimaj, 20 FSM R. 232, 234 (Pon. 2015).

The court will take an information's factual allegations as true for jurisdictional purposes and determine whether those factual allegations do allege a crime over which the court can exercise jurisdiction. The government's allegations remain to be proven at trial. FSM v. Itimaj, 20 FSM R. 232, 234 (Pon. 2015).

When an information charges, in different counts, contamination of both the FSM territorial waters and its Exclusive Economic Zone, the FSM must prove not only that the contamination occurred but also where it occurred since it is unlikely that the contamination took place when the vessel was at a location where trash thrown overboard could contaminate both the territorial sea and the EEZ. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

If a statute makes it an offense to do a certain act "contrary to law," it is not enough simply to cite the statute and to allege that the act was done contrary to law. The pleading must show what other law was violated, either by a citation or by a sufficient statement of facts. This is because an information must be sufficiently certain and unambiguous so as to permit the defendant to prepare its defense, and to inform the court of which of this particular defendant's alleged acts or omissions result in criminal liability. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the offense charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

A count will not be dismissed if it contains a sufficient statement of the facts that allegedly give rise to criminal liability so as to inform the defendants so that they can prepare their defense and so that they can avail themselves of a conviction or acquittal as a bar to subsequent prosecutions. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016).

When the FSM's failure to incorporate the fisheries management agreement provisions by reference in statute, or regulation, or in permits and access agreements leaves the law so vague and ill-defined that what are the acts prohibited cannot be understood by people of ordinary intelligence, and so it cannot serve as a basis for criminal prosecution, the court must grant the defendants' motion to dismiss those counts for the Information's failure to charge an offense. FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

– Information – Amendment

At the trial judge's discretion, the information may be amended to conform to the evidence if it appears fair to do so. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

The government will be permitted to file an amended information to dismiss those counts for which the statute of limitations has expired. FSM v. Edwin, 8 FSM R. 543, 545 (Pon. 1998).

A motion to dismiss an information because the named defendant is not a formally constituted entity is moot when the government's motion to amend the information to change the defendant's name to its proper name is granted. FSM v. Moses, 9 FSM R. 139, 142 (Pon. 1999).

The court may permit an information to be amended at any time before making its finding of guilty or not guilty if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

If the government adds a completely new or different offense of which the defendant had no notice, Rule 7(e) would be violated. But since the original information contained the factual elements necessary to charge the defendants as aiding or abetting another, the defendants had notice of the offense and their substantial rights are not prejudiced. FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

Amending an information to include a crime that is not a lesser included offense of the original charge does not necessarily violate Rule 7(e). FSM v. Sam, 14 FSM R. 328, 332 (Chk. 2006).

The court may permit an information to be amended as any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610 (Pon. 2007).

If the government were to file an amended criminal information which contained the signature of the Secretary of the Department of Transportation, Communication and Infrastructure, *i.e.*, signed by that official, and if the inclusion of this signature reflected the only difference between such an information and the previously-filed amended criminal information, then there would be no additional or different offense that

is being charged, nor would any substantial rights of the defendant be prejudiced. FSM v. Zhang Xiaohui, 14 FSM R. 602, 610-11 (Pon. 2007).

The court may permit an information to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. FSM v. Sam, 15 FSM R. 457, 460 (Chk. 2007).

The filing of an amended information does not require a second affidavit if the affidavit filed with the original information established probable cause as to the amended charge. FSM v. Sam, 15 FSM R. 457, 460-61 (Chk. 2007).

No additional or different offense was charged in an amended information and the defendants' substantial rights were not prejudiced when the defendants had, by reading the original information and the affidavit together, notice from the start of the factual allegations in the case. FSM v. Sam, 15 FSM R. 457, 461 (Chk. 2007).

To the extent that a count is amended to charge aiding and abetting the use of a firearm to commit assault and homicide may subject the defendants, if convicted, to heavier sentences, such an amendment is not barred because no additional or different offense has been charged and the defendants have been on notice from the start (because of the affidavit accompanying the original complaint) that the prosecution alleged that they were criminally liable for another's use of a firearm to commit assault and homicide. FSM v. Sam, 15 FSM R. 457, 461 (Chk. 2007).

Since the court may permit an information to be amended at any time before finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced, when, before the trial court's finding, the information was amended to add violation of section 548 of the 1980 criminal code to violation of section 529 of the 2001 criminal code; when the two sections are identical in all but in two inconsequential ways (in 2001 violation of the statute is changed from being an "offense" to being a "crime" and the feminine pronoun "she" is added to indicate that a man or woman can violate the statute); and when the elements of violating the two statutes and their respective penalty provisions are identical, no additional or different offense was charged by adding Section 548 to the information. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

When, because the two statutes are substantively identical, the appellants were not prejudiced in any way; when the appellants conceded there was nothing different that they would have done to prepare a defense for Section 548 as opposed to Section 529 and when the trial court explicitly gave the opportunity for the appellants to counter any perceived prejudice, amendment of the information to include both sections was proper. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

Since the court may permit an information to be amended at any time before finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced, the court will permit amendments that only clarify the application of the relevant statutes and that make no further factual allegations and do not charge any different or additional offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file a superseding information with additional charges. The Rule 7(e) bar does not apply to a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

– Information – Superseding

The pretrial dismissal of an information, or of counts in an information, does not, if the facts permit, bar the prosecution from filing a superseding information if the accused has not yet been put in jeopardy. FSM v. Esefan, 17 FSM R. 389, 398 n.6 (Chk. 2011).

While Rule 7(e) bars amending an information to charge an additional offense, the prosecution may file

a superseding information with additional charges. The Rule 7(e) bar does not apply to a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

An information is considered superseding when the subsequent information charges a different offense or alleges facts different from the original charges. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

Generally, the prosecution will file a superseding information when new facts or evidence have come to light and it seeks to prosecute new or additional charges stemming from the same course of conduct or when the prosecution seeks to correct defects in the charges already filed. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

It is proper to file a superseding information in response to a defense motion to dismiss the original instrument for insufficiency. FSM v. Meitou, 18 FSM R. 121, 126 n.2 (Chk. 2011).

A superseding information may not be filed once jeopardy has attached or once the defendant has pled guilty, but if neither of these events has occurred, the government may, if the circumstances warrant, file a superseding information. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

A superseding information is proper unless it and the dismissal of the original information were done for the purpose of harassment. FSM v. Meitou, 18 FSM R. 121, 126 (Chk. 2011).

The dismissal of a prosecution without prejudice is proper when the information has been superseded since it is in the public interest that the prosecution accurately charges the offenses that may have been committed. FSM v. Meitou, 18 FSM R. 121, 126-27 (Chk. 2011).

If, when a superseding information has been filed, more time to prepare a defense is needed, the proper remedy to cure that prejudice would be a continuance, not a dismissal. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

– Interrogation and Confession

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM R. 189, 193-94 (Kos. 1986).

A confession which is the product of an essentially free and unconstrained choice by its maker may be used as evidence to establish the guilt of the defendant in court. FSM v. Jonathan, 2 FSM R. 189, 194 (Kos. 1986).

Although questioning of witnesses and suspects is a necessary tool for the effective enforcement of criminal law, courts have recognized that there is an unbroken line from physical brutality to more subtle police use of deception, intimidation and manipulation, and that vigilance is required. FSM v. Jonathan, 2 FSM R. 189, 195 (Kos. 1986).

In the area of police questioning and confessions, the protection against self-incrimination is the principal protection, designed to restrict or prevent use of devices to subvert the will of an accused. FSM v. Jonathan, 2 FSM R. 189, 195 (Kos. 1986).

Overall circumstances and not merely the existence or nonexistence of a promise determines whether

a confession will be accepted as voluntary or rendered inadmissible as involuntary. FSM v. Jonathan, 2 FSM R. 189, 196 (Kos. 1986).

Voluntariness of a confession may not be resolved by reference to any single infallible touchstone, such as whether a promise was made, but instead must be determined by reference to the totality of surrounding circumstances. FSM v. Jonathan, 2 FSM R. 189, 197 (Kos. 1986).

Where a police officer promised to reduce charges if the defendant cooperated but there was no other showing of police intimidation or manipulation and the defendant had recognized that his guilt was apparent, the confession was not induced by the promises but instead was a voluntary response to the futility of carrying the deceit further. FSM v. Jonathan, 2 FSM R. 189, 198 (Kos. 1986).

Police may question persons who, while they are in police custody, fall under suspicion for another crime, without regard to the fact that other persons in a similar category would be released without questioning. FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

Protection offered by the Constitution of the Federated States of Micronesia against compulsory self-incrimination is traceable to the fifth amendment of the United States Constitution. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

Voluntary admissions prompted by the accumulation of evidence against the defendant are a legitimate goal of police investigation. FSM v. Edward, 3 FSM R. 224, 232 (Pon. 1987).

Where admissions have been obtained in the course of questioning conducted in violation of 12 F.S.M.C. 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. FSM v. Edward, 3 FSM R. 224, 233 (Pon. 1987).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218. FSM v. Edward, 3 FSM R. 224, 235 (Pon. 1987).

A statement of a defendant may be used as evidence against him only if the statement was made voluntarily. FSM v. Edward, 3 FSM R. 224, 236 (Pon. 1987).

In determining whether a defendant's statement to police is "voluntary," consistent with the due process requirements of the Constitution, courts should consider the totality of the surrounding circumstances. Courts review the actual circumstances surrounding confession and attempt to assess the psychological impact on the accused of those circumstances. FSM v. Edward, 3 FSM R. 224, 238 (Pon. 1987).

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).

Where no motion to suppress a confession has been made before trial and no cause has been offered as to the failure to raise the objection, the trial court was justified in finding that the defendant had waived any objection to the admission of the confession. In re Juvenile, 4 FSM R. 161, 163 (App. 1989).

Where the trial record shows no waiver of a minor's rights against self-incrimination, where a remarkable discrepancy exists between police procedure for taking a statement and the written evidence offered at trial, where the only evidence supporting the conviction other than the confession is an accomplice's testimony, where the minor is 16 years of age and had been on detention some 2 weeks prior

to his confession, and where the parents of the minor were absent at the time the confession was made, the trial court erred in admitting the defendant's confession. In re Juvenile, 4 FSM R. 161, 164 (App. 1989).

A defendant's statement will be suppressed when the defendant has not been advised of all the rights set forth in 12 F.S.M.C. 218 (1)-(5), even though he was advised of the right to remain silent and the right to counsel and he waived those rights. FSM v. Sangechik, 4 FSM R. 210, 211-12 (Chk. 1990).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

Although implied waivers of a defendant's rights might be valid there is a presumption against a finding of a waiver of rights. Moses v. FSM, 5 FSM R. 156, 159-60 (App. 1991).

A form which advises a suspect of his right to lawyer, and of his right to remain silent but only asks if the suspect wants a lawyer now, is confusing and lacks a specific waiver as to the right to remain silent. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because the court is hesitant to limit the broad discretion afforded the trial judge by Criminal Rule 14, and because many problems can be eliminated by redaction of the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM R. 224, 230 (App. 1991).

For a confession of a defendant to be admissible as evidence the defendant must not merely waive his right to counsel but must also specifically waive the independent right to remain silent. Hartman v. FSM, 5 FSM R. 224, 234-35 (App. 1991).

By responding voluntarily to questions asked without coercion, after he has been advised of his rights, a defendant waives his right to remain silent. FSM v. Hartman (I), 5 FSM R. 350, 352 (Pon. 1992).

If severance is denied, the defendants' out of court statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. Hartman v. FSM, 6 FSM R. 293, 301-02 & n.12 (App. 1993).

By statute, statements taken as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, even if voluntary. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

Even if the police advise a person of all his rights in strict compliance with the statute, the issue remains whether the incriminating statement was voluntarily made. Voluntariness of a statement made while in custody is determined not by consideration of a single fact alone but instead by reference to the totality of surrounding circumstances. One of the standards to be applied in assessing a claim of involuntariness is the length of detention of the arrested person. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

When a person's ability to think or reason has been diminished due to lack of rest by being held in custody for over 12 hours, his submission to questioning is not an act of voluntariness or consent even though he was advised of some of his rights just before questioning. Any statements made then were the products of physical exhaustion and a sense of oppression, and as a result of violation of the accused's rights under 12 F.S.M.C. 218. Under 12 F.S.M.C. 220, the statement, or evidence derived therefrom, is thus inadmissible against the accused. FSM v. George, 6 FSM R. 626, 629 (Kos. 1994).

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM R. 633, 640 & n.2 (Chk. 1996).

A defendant's constitutional right against self-incrimination is an important right, and, although an implied waiver of the right might be valid, there is a presumption against such waivers. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

No FSM case determines that a corporation is a person for purposes of the privilege against self-incrimination found in article IV, section 7 of the FSM Constitution. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 352 (Kos. 2000).

Should the privilege against compulsory self-incrimination attach, it would be for the defendants to assert, not the FSM. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 351, 353 (Kos. 2000).

Where a person's freedom was substantially restricted by a police officer when he was placed into a police car and where that person was under the police officer's suspicion that he was involved in the crimes committed earlier that evening, he was considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. And when the police officers failed to advise him of his constitutional rights at the time he was placed in the police car and considered arrested, all his statements made to the police after his arrest and placement into the police car and before he was advised of his constitutional rights, are inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 193-94 (Kos. S. Ct. Tr. 2002).

Statements made by an arrested person being questioned by police without having been advised of his constitutional rights violates the law and the Kosrae Constitution, and any such statement made by that person is inadmissible against him. Kosrae v. Erwin, 11 FSM R. 192, 194 (Kos. S. Ct. Tr. 2002).

A defendant's statement may be used as evidence against him only if the statement was made voluntarily. In deciding whether a statement was made voluntarily, the court will consider the totality of the circumstances. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The protection against self-incrimination requires the giving of the so-called "Miranda" warnings to the accused, prior to questioning of the accused. The "Miranda" warnings include statements made by the police officers to an accused regarding the accused's right to remain silent and right to legal counsel, free of charge. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

Routine questioning by government agents as part of procedure does not require Miranda warnings. The purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself. The government agents cannot be held to foresee that criminal liability of the subject might be exposed during the questioning. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

Routine traffic stops which occur on the open road in view of passersby, and which do not result in custodial interrogation, do not require Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

Any statements or confessions made after arrest but before accused was provided his rights is subject to suppression of the statements or confession, but when there was no statement and no confession made

by the defendant between the time of arrest and the time of his booking a short time later, there are no statements or confessions to suppress. Kosrae v. Tulensru, 14 FSM R. 115, 121 (Kos. S. Ct. Tr. 2006).

When the evidence was uncontroverted that the defendant signed a Chuukese language advice of rights form showing that he had been informed of each of his rights under 12 F.S.M.C. 218, that he understood those rights, and that he waived his rights to silence, to have an attorney or someone else present on his behalf, and to have someone called for him, the statement he gave at the time the advice of rights and waiver form was executed was knowingly and intelligently and therefore voluntarily given within 24 hours of his arrest. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

For a defendant to voluntarily waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. The government has overcome that presumption when it has produced signed advice of rights forms showing waivers and the defendants do not controvert that evidence. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

Our constitution provides a criminal defendant with the right to be confronted by his accusers, which means that a defendant may cross-examine the witness against him. Consequently, the court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculpates another defendant since a statement cannot be cross-examined. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

A "weapons lineup" conducted without any advice of rights or waiver beforehand, will be suppressed to the extent that the "weapons lineup" constituted statements by the defendants. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

If codefendants are tried together, a defendant's out-of-court statement ought to be redacted to eliminate references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

Evidence obtained as a result of the defendant being detained for more than 24 hours without being charged or released or obtained when the defendant was not properly informed of his rights must be excluded. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

When none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours without being charged or released since his interview by a state police officer took place approximately 7 hours after he was arrested and therefore before the expiration of the 24 hour period and since his interview with a national police officer took place two days after he was charged in the Pohnpei Supreme Court and while he was in state police custody pursuant to a Pohnpei Supreme Court order, the motion to suppress those statements will be denied. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

A defendant's contention that the state and national police failed to properly inform him of his rights is without merit where he was properly informed in Pohnpeian of his rights, including the right to remain silent and the right to counsel, three times when a state officer read him his rights in Pohnpeian as the officer arrested him in the morning, when the state officer read him his rights in Pohnpeian before his interview that afternoon, and when a national officer read him his rights in English and explained each right in Pohnpeian before his later interview, and thus his motion to suppress will be denied. FSM v. Louis, 15 FSM R. 206, 210 (Pon. 2007).

When a defendant fails to address the particular circumstances of his warrantless arrest or the bearing

on the probable cause showing, if any, of the witness testimony contained in the police report referred to in the affidavit supporting the criminal information, the court can discern no legal basis for dismissing the case and even assuming the defendant's arrest was illegal, he is not entitled to dismissal of the information. The remedy for an illegal arrest is suppression of any statements made by the defendant. Chuuk v. Sipenuk, 15 FSM R. 262, 265 & n.2 (Chk. S. Ct. Tr. 2007).

When a defendant did not make any statements to the police, there are no statements to suppress. Chuuk v. Sipenuk, 15 FSM R. 262, 265 (Chk. S. Ct. Tr. 2007).

Failure to inform an accused of his rights does not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the police officers only viewed the accused as a potential witness in the matter of another person, not as a suspect; when the officers dropped him back off at the funeral where they originally met him instead of taking him to the police station and the officers never substantially restricted or controlled the accused's freedom of movement; when the accused agreed to take the officers to fetch the handgun at Palikir, and willingly went with them in the vehicle; and when there is simply no evidence that the officers threatened, demanded, or compelled the accused in any manner, the accused was not under arrest during the car ride to and from Palikir. Accordingly, the officers were not required to inform the accused of his rights under 12 F.S.M.C. 218. FSM v. Louis, 15 FSM R. 348, 353 (Pon. 2007).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the right to remain silent, before he purportedly confessed to possessing a firearm and ammunition, the motion to suppress his confession will be denied. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, presented its side first at the suppression hearing. FSM v. Sam, 15 FSM R. 491, 492-93 (Chk. 2008).

Where the court finds that an accused's statement was voluntarily made after he had been informed of, and understood his rights, and chose to waive those rights, that will not end the analysis if the accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, because the burden is on the prosecution to show that the evidence is still admissible. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

It is unlawful for the government to fail either to release or charge an arrested person with a criminal offense within a reasonable time, which must under no circumstances exceed 24 hours. Thus, evidence, such as an accused's statement, obtained as a result of the defendant being detained for more than 24 hours without being charged or released must be excluded. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When the defendant's advice of rights form waiving his rights was dated the day after his arrest and when the government presented no evidence as to the time of day on that the defendant made his statement on the day following his arrest or as to whether the statement was made within 24 hours of his arrest, the statement will be suppressed because once the defendant has established the government's unlawful act, it is the government's burden to show that the challenged evidence was not the result of that unlawful act. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

A defendant's suppressed statement may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

By statute, 12 F.S.M.C. 218, statements taken (even if made voluntarily) and evidence obtained as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, but when none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours, the motion to suppress will be denied. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it may be the defendant's motion to suppress, the government, because it has the burden, presents its side first at a suppression hearing. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

When the government did not present any evidence that the accused's statement(s) were voluntary, but instead, averred that it did not take any statement from him, if there were any statements by the accused in the prosecution's possession, they could be suppressed. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress an accused's statement made while in police custody will be granted when the accused was unlawfully detained since he was held over 24 hours without being charged or brought before a judge and when the prosecution failed to prove that the custodial statement was given within 24 hours of his arrest. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

Although routine questioning by government agents does not require a rights warning to be given beforehand since the purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself, but when the questioning was not routine since the state police officer, who questioned the accused for 30 minutes outside of where he lived, did so because a complainant had named the accused as the person who had earlier possessed and discharged a firearm in her presence and when the accused was thus already a suspect and the officer's questioning was designed to elicit incriminating statements and to produce incriminating evidence while the accused's freedom of movement was substantially restricted or controlled by the officer exercising official authority, the officer should have informed the accused of his rights before the questioning went very far. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

When, after the accused had been questioned for some time without being informed of his rights, the accused went into his residence, retrieved a handgun and five shells, and came out and turned the gun and ammunition over to the officer, the firearm was not seized as the result of an illegal search because the police officer did not conduct a search of the residence or even enter it, but since the accused's surrender of the handgun and ammunition was the result of the officer's questioning and the incriminating statements made when the accused was interrogated without having been informed of his rights, the handgun and ammunition are thus inadmissible as they are the fruit of the poisonous tree. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, usually presents its side first at a suppression hearing. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

When an accused's statement is voluntarily made after he has been informed of, and understood his rights, and chosen to waive those rights, his statement is admissible unless the accused has established a relationship between unlawful police activity and the statement sought to be suppressed. The burden then remains on the prosecution to show that the evidence is still admissible. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

The remedy for a defendant's unlawful detention over 24 hours is not the suppression of evidence lawfully obtained before the 24 hours passed. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

Without any other evidence, a signed advice of rights and waiver with the same date and time as the accused's signed statement cannot meet the prosecution's burden to show the advice of rights was given, and a waiver received, before the accused began to answer questions or make a statement. The statement will therefore be suppressed. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

A motion to suppress an accused's statement will be granted when the government failed to meet its burden to show that the accused was advised of his rights, that he understood those rights, and that he waived them before he voluntarily made his statement. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

Even if voluntarily given, a statement that is dated the day after the accused's arrest, but with no time given, is insufficient to show that the statement was not the product of the government's unlawful act of holding the defendant longer than 24 hours after his arrest. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

While the better practice is to finish all the paperwork concerning the advice of rights and waiver before beginning questioning, it is not a requirement in order for an accused to have made a valid waiver of his rights. The greater certainty engendered by completing the advice of rights and waiver paperwork first does, however, make things easier on counsel and the courts. FSM v. Aliven, 16 FSM R. 520, 529 (Chk. 2009).

If codefendants are tried together, a defendant's admissible out-of-court statement ought to be redacted to eliminate references to other codefendants. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

When an accused's statement has been suppressed, it may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009).

Since the government has the burden of proof to prove by a preponderance of the evidence that the defendants' statements were admissible; it presented its side first on the issue. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

For the defendants' statements to be admissible, the government is required to prove three things: 1) that the defendants, once they were placed under arrest and before they made their statements, knowingly and intelligently waived their constitutional rights against self-incrimination, including their rights to counsel and to remain silent; 2) that the statements were voluntarily made by the defendants; and 3) that the confessions were made within 24 hours of the defendants' arrests. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

The government has overcome the presumption against waiver when it has produced signed advice of rights forms showing timely waivers and the defendants do not controvert that evidence. Witness testimony is also admissible on the issue of whether a waiver was knowingly and voluntarily given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the

right to remain silent, before he confessed, the court will deny a motion to suppress a confession that is based on the ground that a waiver was not knowingly and intelligently given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the advice of rights form was written in English and contained accurate descriptions of each of the defendant's rights; when officers testified that the rights were explained in English and Chuukese; and when, although to avoid any confusion on the issue the form itself should be written in English and Chuukese, the defendants knew English, there is no issue with the defendants' understanding of the contents of the advice of rights form. Chuuk v. Suzuki, 16 FSM R. 625, 629-30 (Chk. S. Ct. Tr. 2009).

When an accused asked for counsel before he gave his statement, the government failed to overcome the presumption against the accused's waiver of his right to counsel and to remain silent. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

Even if a defendant has been advised of and waived his rights, a subsequent statement may be used as evidence against him only if the statement was made voluntarily. To make the determination about whether a statement was voluntary, the court must examine the totality of the circumstances surrounding the confession and assess the psychological impact on the defendants of those circumstances. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his constitutional rights, is grounds for suppression of his subsequent statement. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

The only circumstance in which the government may use a defendant's suppressed statement is if the defendant chooses to testify on his own behalf; in which case, the statement can be used to impeach his credibility. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

An officer's hitting an arrestee during interrogation or during his detention immediately before interrogation is compelling evidence that any subsequent statement was not voluntary, but was the result of intimidation and coercion. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

In the absence of clear, unbroken testimony regarding the period when the statements were prepared and signed by the defendants, the court is unable to determine if their statements were voluntarily made, or whether they may have been coerced during the time periods not covered by the testimony. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

By statute, statements taken as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay, that is, twenty-four hours from arrest, are inadmissible, even if voluntary and the defendant has waived his rights against self-incrimination. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

When the court has determined that a defendant's statement was taken after his invocation of his right to counsel and that neither his nor another's statements were voluntarily given, the timeliness of their statements does not save them from suppression. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

The court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculcates another defendant since a statement cannot be cross-examined.

Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

If the government seeks to admit a defendant's out-of-court statement, it ought to be redacted to eliminate references to his co-defendants. Failure to do so may result in reversal of convictions in the interests of justice. The parties should make all attempts to stipulate to redacted statements without the court's assistance. The court, especially when taking into account its fact-finding function, need not and should not view the statements until after the redactions have been made. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Once an accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, the burden is on the prosecution to show that the evidence is still admissible. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

When an accused's advice of rights form was signed at 10:03 a.m., on the day after his arrest at about 10:00 a.m., the prosecution has failed to prove that the accused's statement was given within 24 hours of his arrest even though there was some testimony that the accused signed the form not only after he was informed of his rights but also after he subsequently gave a statement since this is neither the usual nor the better method of conducting a police interrogation. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Statements and evidence obtained from an accused during the first 24 hours after his arrest are not inadmissible merely because the accused ended up being detained for over 24 hours. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

When the only evidence and testimony properly before the court and from which the court may draw inferences and find facts supports the conclusion that an accused's statement was voluntarily made not long after his arrest and well within the 24-hour timeframe, the preponderance of the evidence thus weighs in the prosecution's favor and the accused's motion to suppress his statement will be denied. FSM v. Suzuki, 17 FSM R. 70, 74-75 (Chk. 2010).

The use of a non-testifying defendant's statement as evidence against a codefendant would violate the codefendant's constitutional "right of confrontation" since the declarant would not be a trial witness subject to the codefendant's cross-examination. This difficulty can be eliminated if the parties redact any codefendant statements before trial. FSM v. Suzuki, 17 FSM R. 70, 75 & n.1 (Chk. 2010).

Arrestees are not prejudiced if they are notified of the offense(s) with which they are to be charged soon after they are taken into custody and before giving a statement. FSM v. Suzuki, 17 FSM R. 114, 118 (Chk. 2010).

When it is determined that the searches were conducted with the defendant's voluntary consent, the defendant's claims of a violation of his right not to incriminate himself pursuant to FSM Const. art. IV, § 7 also fail because a confession's voluntariness is determined by reference to the totality of surrounding circumstances. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When, after arriving at the police station, a person was advised of his constitutional rights in a "Your Rights in the Constitution" form that he signed; when the officer went over his rights one by one; when the officer specifically asked the person whether he needed a lawyer at that time and he said no; when, by signing the form, he acknowledged that he had been advised of his rights and understood them; when, following his signing of the advice of rights form, the police officers began their interrogation; and when there was no use of threats by the police officers and he was not under duress at the time, the evidence shows that his statements were made knowingly and voluntarily and that his statements were not extracted through any form of compulsion. FSM v. Edward, 18 FSM R. 444, 449-50 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible

against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

A defendant must be advised of a full "panoply" of due process rights in addition to the right to remain silent and the right to counsel. These may be summarized as the right not to be denied access to counsel, family members, or other interested persons; the right to send a message, or other communications; the right to stop all questioning until such persons are present; the right to remain silent; and the right to be brought before a judge or released within a reasonable time. FSM v. Ezra, 19 FSM R. 497, 509 & n.4 (Pon. 2014).

The statutory protections are reviewed under a two-part analysis: first, under a statutory review of whether the defendant knowingly and intelligently waived his rights before giving a statement to the police. Second, they are reviewed under a constitutional backdrop of whether the defendant voluntarily waived those rights. This second look is often cursory, or entirely unnecessary, in the ordinary case where no investigatory irregularities are implicated. This two-part analysis is ultimately the inquiry into whether a defendant, knowingly, intelligently, and voluntarily waived his or her rights. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

A motion to suppress an accused's statement will be granted when the government has failed to meet its burden to show that the accused was advised of his rights, that he understood those rights, and that he waived them before he voluntarily made his statement. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

The government has the burden of proving that an accused's statement is voluntary and thus admissible and must show this by a preponderance of the evidence. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

Waiver of a fundamental right may not be presumed in ambiguous circumstances. Thus, a signed advice of rights form without any other evidence cannot meet the prosecution's burden to show the advice of rights was given and a waiver received. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

While the better practice is to finish all the paperwork concerning the advice of rights and waiver before beginning questioning, it is not a requirement in order for an accused to have made a valid waiver of his rights. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

An accused's waiver may be inferred by his responding voluntarily to questions asked of him without coercion after he has been advised of his rights. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

Voluntariness of a confession may not be resolved by reference to any single infallible touchstone, but instead must be determined by reference to the totality of the surrounding circumstances. FSM v. Ezra, 19 FSM R. 497, 511 (Pon. 2014).

There are two sets of factors to consider in determining whether a suspect's will was overborne. The first set of factors are the particular vulnerabilities and characteristics of the defendant himself, such as the accused's age, education, intelligence and general sophistication. The second set of factors focuses on the coercive conduct and the manner of the interrogation such as the length, detention facility, presence of weapons, number of interrogators, access to food and water, threats, deception, promises, and the denial of access to family friends or attorneys as well failure to inform suspect of rights. Of course, the actual use of physical force clearly violates the voluntariness standard. Ultimately, this is an ad hoc test and no one aspect is determinative. FSM v. Ezra, 19 FSM R. 497, 511-12 (Pon. 2014).

The determination of whether there has been an intelligent waiver of right to counsel must depend, in

each case, upon the particular facts and circumstances surrounding that case, including the accused's background, experience, and conduct. FSM v. Ezra, 19 FSM R. 497, 511 n.7 (Pon. 2014).

When the entire interview was conducted in Pohnpeian; when the enumerated form shows that the defendant and his guardian were advised of his rights and that at the end of each statement he was asked whether he understood the right, and that after each statement he indicated, in writing, "yes" in each blank provided; when at the conclusion of the reading of the advice of rights the officer asked the defendant if he understood his rights and he responded that he did; when the officer asked the guardian if she understood, and she nodded her head; when the defendant answered "no" to "Do you want to meet your attorney now?"; when the defendant and the guardian both then signed the form; and when the officer subsequently took the defendant's statement as recorded in the record of interview which both the defendant and his guardian also signed, it was sufficiently reliable evidence to indicate that the defendant knowingly and intelligently waived his rights. FSM v. Ezra, 19 FSM R. 497, 512-13 (Pon. 2014).

When the defendant voluntarily went to the police station for questioning and when the officer's explanation adequately informed the defendant as to the reason for the questioning, and the requirement under 12 F.S.M.C. 214 was met, at that time, regardless of whether or not an arrest was subsequently effected in a custodial environment. FSM v. Ezra, 19 FSM R. 497, 517 (Pon. 2014).

Even though there was no probable cause to charge a defendant with theft prior to his own incriminating statements, when the police had probable cause to suspect him of trespass based on the video surveillance and interviews of the other co-defendants, that alone was sufficient to ask him to come in for questioning or to arrest him without further questioning since it is not uncommon for an ongoing investigation to result in the emergence of additional crimes, or the reduction of crimes, as new facts and evidence come into light, including statements taken from the defendants themselves. FSM v. Ezra, 19 FSM R. 497, 517 (Pon. 2014).

Although there is a potential danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, many problems can be eliminated by a redaction. Thus, the court has not adopted a *per se* rule of severance. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

The use of a defendant's inculpatory statements in evidence against a co-defendant, would violate the right of confrontation since the declarant is not a witness at the trial subject to cross examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

– Joinder and Severance

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

Although there is a danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, because the court is hesitant to limit the broad discretion afforded the trial judge by Criminal Rule 14, and because many problems can be eliminated by redaction of the statement, the court will not adopt a *per se* rule of severance at this time. Hartman v. FSM, 5 FSM R. 224, 230 (App. 1991).

If severance is denied, the defendants' out of court statements ought to be redacted to eliminate in each references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. Hartman v. FSM, 6 FSM R. 293, 301-02 & n.12 (App. 1993).

Severance of joint criminal defendants is a matter of sound judicial discretion. A trial judge is afforded broad discretion under Rule 14 to grant relief from prejudicial joinder – to sever defendants or counts from trial. When co-defendants were prejudiced by their joinder in a case because an attorney disqualified from prosecuting them assisted in the trial preparation, the court will order the severance of the charges against

them. FSM v. Kansou, 14 FSM R. 171, 176 (Chk. 2006).

Rule 14 comes into play only if the original joinder was proper. It then permits a severance—or an order to the government to elect—if this is needed to avoid prejudice. FSM v. Kansou, 14 FSM R. 171, 176 n.3 (Chk. 2006).

Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

Two or more defendants may be charged in the information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 n.4 (Pon. 2007).

If it appears that a defendant or the government is prejudiced by a joinder of offenses or defendants in a single information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

When there is only one defendant in the matter, the prejudice that could necessitate a severance of trial, does not exist. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

Absent a strong showing of prejudice, co-conspirators are customarily tried together. This is not only for reasons of judicial and prosecutorial economy and, in the FSM, public defender economy, but also to give the factfinder a fuller picture of the scheme, as well as to decrease the chance of inconsistent verdicts and allow witnesses to avoid the burden of having to testify at successive trials. FSM v. Kansou, 15 FSM R. 180, 186-87 (Chk. 2007).

Since, absent a strong showing of prejudice, co-conspirators are customarily tried together, when the movant has not made a strong showing and has not identified any defense he would raise but cannot because his case is joined with another, his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

There is no rule requiring severance whenever co-defendants have conflicting defenses. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

Properly-joined defendants should be severed under Criminal Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

All past delays attributable to any co-defendant are also attributable any other co-defendant. Severance would not change this. All delay attributable to one co-defendant because it was attributable to another co-defendant before severance would still be attributable to the first co-defendant. A severed co-defendant would have a separate speedy trial "clock" only for the time after severance was ordered. So when trial on the merits due in the foreseeable future, severance and the start of a separate speedy trial "clock" for one co-defendant would not help him preserve his speedy trial right or prevail on an unnecessary delay defense. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

If a co-defendant were prepared to go to trial soon while his co-defendant was not ready for trial in the foreseeable future, then severance could be appropriate to preserve his speedy trial right and avoid unnecessary delay, but when that is not the case, the movant has not shown a serious risk of, or articulated, any specific instances of prejudice, and his motion to sever will be denied. FSM v. Kansou, 15 FSM R. 373, 380 (Chk. 2007).

With a joint trial, while not immediately imminent, the next step in the case and expected in the foreseeable future, severance would only increase delay for the movant since both he and his co-defendant could not be tried simultaneously, and most likely his trial would not start until some time after his co-defendant's had finished. FSM v. Kansou, 15 FSM R. 373, 380 n.5 (Chk. 2007).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The best practice for a trial court finding itself in the situation where a non-testifying defendant's out-of-court statement will be introduced into evidence in a joint or multi-defendant trial, is to make an early, clear and uniform record identifying those defendants against whom the out-of-court statement will and will not be used. A trial court is not generally prohibited from admitting the statement. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

Pretrial rulings on the admissibility of evidence may have had an impact on the decision made by the FSM to later move for severance and the prejudice to the FSM by the joint trial of the two co-defendants are sufficient cause for the court to grant a relief from the Rule 12(f) waiver for failure to make the severance request earlier. FSM v. Edward, 18 FSM R. 547, 549 (Pon. 2013).

While the two defendants' joint trial would promote efficiency and might remove the possibility of inconsistent verdicts, the possible prejudice to the FSM is substantial and outweighs these factors. Severance of the defendants' trials will have the effect of setting back the trial dates, but the delay should not be lengthy and when the trials should not be longer than several days each and it is always possible that a plea would mean no trial at all, any delay or waiting by the objecting defendant is not anticipated to be unduly burdensome. FSM v. Edward, 18 FSM R. 547, 549-50 (Pon. 2013).

Severance of joint criminal defendants is a matter of sound judicial discretion. A trial judge is afforded broad discretion under FSM Criminal Rule 14 to grant relief from prejudicial joinder – to sever defendants from trial. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

If it appears that a defendant or the government is prejudiced by a joinder of offenses or defendants in a single information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

Severance will be granted when the prejudice to the FSM by the joint trial of the two co-defendants is sufficient cause to grant a severance for the trials of the two defendants; when it outweighs the benefits of a single trial; and when no significant delay in the separate trials for both defendants is expected. FSM v. Edward, 18 FSM R. 547, 550 (Pon. 2013).

The court has the authority to order two or more informations to be tried together. However, if it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of the defendants or provide whatever other relief justice requires. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

Although there is a potential danger of prejudice in cases where a co-defendant's inculpatory statement is admitted into evidence, many problems can be eliminated by a redaction. Thus, the court has not adopted a per se rule of severance. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

– Jurisdiction

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1987).

The language employed by Congress in 11 F.S.M.C. 901 leaves no doubt that Congress was carefully limiting this provision for conduct of cases in the name of the national government to cases involving violation of laws enacted by the Congress and violations of statutes within the jurisdiction of the national government. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When the FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under a theory of ancillary jurisdiction. FSM v. Hartman, 1 FSM R. 43, 44-46 (Truk 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory Code above the monetary minimum of \$1,000 set for major crimes. Where the value is below \$1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the Federated States of Micronesia, pursuant to Secretarial Order 3039, section 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 131 (Truk 1982).

Offenses before the National Criminal Code's effective date are outside the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 133, 134 (Truk 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by the people of the Federated States of Micronesia, criminal law provisions in Title 11 of the Trust Territory Code became the law of governments within the Federated States of Micronesia by virtue of the Constitution's transition provisions. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 189-90 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of the National Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of article XI, section 6(b) of the Constitution. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

Article IV, section 6 of the FSM Constitution, as implemented by Rule 7(c) of the Rules of Criminal Procedure, requires that the government's reliance upon aggregation to bring an alleged crime within the jurisdictional boundaries of the court be plainly disclosed to the defendant in the information. Fred v. FSM, 3 FSM R. 141, 144 (App. 1987).

State courts are not prohibited by article XI, section 6(b) of the FSM Constitution from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

The diversity jurisdiction provisions of article XI, section 6(b) of the FSM Constitution do not apply to criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

A national crime is one that is committed in some place where the national government has jurisdiction, or that involves an instrumentality of the national government, or involves an activity that the national government has the power to regulate. This power to define national crimes was inherent in the national government and existed before the 1991 constitutional amendment made the power express. FSM v. Fal,

8 FSM R. 151, 154 (Yap 1997).

A first and fundamental principle of criminal jurisprudence is that in order for a state to impose criminal penalties on an individual, it must be shown that he or she committed some unlawful act or engaged in some prohibited course of conduct, together with a wrongful intent or mens rea. Nelson v. Kosrae, 8 FSM R. 397, 405 (App. 1998).

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).

The FSM Supreme Court has jurisdiction to convict and sentence a person who commits, or attempts to commit a crime, in whole or in part within the Federated States of Micronesia. FSM v. Tipingeni, 19 FSM R. 439, 444-45 (Chk. 2014).

Even though the crimes being aided and abetted took place on Guam, the FSM Supreme Court, under 11 F.S.M.C. 103(2)(a), has jurisdiction to convict and punish a defendant on the aiding and abetting charges when the aiding and abetting took place in Chuuk. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

– Juvenile

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

To dismiss litigation against juvenile defendants for lack of jurisdiction would be contrary to the National Criminal Code despite the fact that Code makes no reference to charges against juveniles or to the Juvenile Code. FSM v. Albert, 1 FSM R. 14, 15 (Pon. 1981).

The Juvenile Code section mandating that courts adopt flexible procedures in juvenile cases remains in effect; neither the National Criminal Code nor any other provision of law enacted by the Congress is at odds with it. 12 F.S.M.C. 1101. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

It is appropriate to proceed separately in cases involving multiple juvenile defendants. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

In the absence of any explanation in the legislative history or from the government to justify a different interpretation, the only apparent reason for the deletion of the words "alleged to be found delinquent" from the Model Penal Code definition of official detention is that Congress wished to exclude detained juveniles from the national prohibitions against escape. 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Juveniles alleged or found to be delinquent children are not under "official detention" within the meaning of 11 F.S.M.C. 505(1). In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

The Kosrae Pre-Trial Diversion Program is available only to first time juvenile offenders charged with certain non-violent crimes. When one of the charges against the subject juvenile, assault and battery, is a violent crime as it involved physical force and injury to the victim, the program is not applicable. Kosrae v. Ned, 13 FSM R. 351, 352 (Kos. S. Ct. Tr. 2005).

A Kosrae Pre-Trial Diversion Agreement must contain payment of restitution and/or performance of community service, and in a case where restitution is not warranted, the component of community service must be included. Kosrae v. Ned, 13 FSM R. 351, 352 (Kos. S. Ct. Tr. 2005).

The imposition of community service on a juvenile offender would not violate the provisions or spirit of the United Nations Convention on the Rights of the Child since community service, could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. Kosrae v. Ned, 13 FSM R. 351, 354 (Kos. S. Ct. Tr. 2005).

The waiver of a pre-trial diversion agreement's limited applicability, is permitted, despite that one offense charged is a violent offense, assault and battery, when the benefits to the juvenile to be gained through her participation in the Pre-Trial Diversion Program, and dismissal of the petition upon its completion, merits the pre-trial diversion agreement's application. Kosrae v. Ned, 13 FSM R. 351, 354-55 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, Section 6.4802 permits an offender over the age of sixteen to be treated as an adult, in all respects, if the court determines that his physical and mental maturity justify it. In the proceedings to determine whether an offender should be treated as an adult, the court may order the juvenile to be examined by a physician or a psychologist, to aid the court in determining the propriety of treating the juvenile as an adult accused. Kosrae v. Ned, 14 FSM R. 86, 88 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence apply to civil, criminal and contempt proceedings, but are not applicable to miscellaneous proceedings, such as preliminary examinations for criminal cases and bail proceedings. The rules do not reference their applicability or inapplicability to juvenile proceedings or to preliminary proceedings to determine whether to treat a minor defendant as an adult. Kosrae v. Ned, 14 FSM R. 86, 89 (Kos. S. Ct. Tr. 2006).

Neither state law nor the Kosrae Juvenile Rules require a witness to be qualified as an expert witness under the Evidence Rules in order to accept her testimony and report in a preliminary proceeding to determine whether to treat the defendant as an adult. The court may accept the witness's qualifications based upon her training as a physician and her position as Clinical Director of the FSM National Health Substance Abuse and Mental Health Program. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

The Kosrae Penal Code, Section 13.104(4)(a) excludes certain minors from criminal liability, but it also does not prohibit criminal proceedings against minors. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

Criminal proceedings against minors must be brought under Chapter 48, unless the minor is 16 or 17 and the court determines that his mental and physical maturity justify treating the minor as an adult. A minor who is 16 or 17 may be held responsible for his criminal conduct either as a juvenile under Title 6, Chapter 48 or an adult under Title 13. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

Although the initial filing of the case as a criminal matter, and not as a juvenile proceeding, was in error, when as soon as the court was informed that the defendant was minor, the Juvenile Rules were immediately applied to the proceedings and all proceedings were then closed to the public, and the court ensured that a parent of the defendant was present at all proceedings, there was no prejudice to the defendant and the defendant's motion to dismiss on that ground will be denied. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

When a normal sixteen-year old young man's physical and mental maturity warrant treating him as an adult in a criminal proceeding, the state's motion to treat juvenile accused as an adult will be granted. Kosrae v. Ned, 14 FSM R. 86, 91 (Kos. S. Ct. Tr. 2006).

– Kidnapping

The victims were confined in a "place of isolation" within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, where they were moved from place to place but all locations were in the same

vicinity, their captors were in complete control, and they could expect no assistance from anybody. Teruo v. FSM, 2 FSM R. 167, 170-71 (App. 1986).

Confinement for four to six hours is a "substantial period" of confinement within the meaning of 11 F.S.M.C. 921(1), defining the offense of kidnapping, particularly where the victims were subjected to indignities and brutalities amounting to torture during that time. Teruo v. FSM, 2 FSM R. 167, 171 (App. 1986).

The criminal charge of kidnapping is defined as forcibly or fraudulently and deceitfully, and without authority, imprisoning, seizing, detaining, or inveigling away any person (other than his minor child), with intent to cause the person to be secreted against his will, or sent out of the State against his will, or sold or held as a slave or for ransom. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

The offense of kidnapping requires proof beyond a reasonable doubt of forcibly or fraudulently and deceitfully, and without authority, imprisoning, seizing, detaining, or inveigling away any person (other than his minor child), with intent to cause the person to be secreted against his will, or sent out of the state against his will, or sold or held as a slave or for ransom. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

When there was undisputed evidence that the defendant had grabbed and held on to a six year old girl's arm and then forced her to walk across the street with him into the wooded area where he intended to secrete her against her will and the defendant is not the victim's parent, the state did prove beyond a reasonable doubt all elements of the offense of kidnapping. Kosrae v. Kilafwakun, 12 FSM R. 590, 595 (Kos. S. Ct. Tr. 2004).

– Major Crimes

A simple assault, one without a weapon or the intent to inflict serious bodily injury, is punishable only by six months' imprisonment. It is neither a major crime under the National Criminal Code, because it does not call for three years' imprisonment, nor a felony. FSM v. Boaz (I), 1 FSM R. 22, 24 n.* (Pon. 1981).

Because Congress defined a major crime under the National Criminal Code as one calling for imprisonment of three years or more and because assaults under Title 11 of the Trust Territory Code are punishable by only six months' imprisonment, it is clear that the assault provisions of the Trust Territory Code are left intact. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Criminal Code is an exercise of Congress's power to define and provide penalties for major crimes. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. Joker v. FSM, 2 FSM R. 38, 41 (App. 1985).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the Federated States of Micronesia. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, article IX, section 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12

F.S.M.C. 1201. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the national government forced helplessly to stand aside. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the Constitution of the United States. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The scope of state police powers under the FSM Constitution must be determined by reference to the powers of the national government under the Major Crimes Clause. It follows that legitimate exercise of the national government power to define major crimes cannot be viewed as an unconstitutional encroachment upon the states' police powers. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The precise line to be drawn in defining major crimes is to be determined by Congress. The policy determined in the Constitutional Convention was that the major-minor crimes distinction be based on the severity of the crime; and that local custom be taken into account. Tammow v. FSM, 2 FSM R. 53, 60 (App. 1985).

The general rule of criminal procedure is that jurisdiction over a particular crime places in the trial division the necessary authority to find a defendant guilty of any offense necessarily included in the offense charged. Kosrae v. Tosie, 4 FSM R. 61, 63 (Kos. 1989).

Under the constitutional and statutory framework of the Federated States of Micronesia, the FSM Supreme Court trial division, when exercising jurisdiction over cases reasonably initiated as major crimes charges, may also exercise jurisdiction over lesser included offenses prohibited by state law. Kosrae v. Tosie, 4 FSM R. 61, 65 (Kos. 1989).

Rather than rely heavily on United States precedent for guidance in establishing principles of federalism in matters of criminal regulation, the FSM Supreme Court is under an affirmative obligation to develop approaches suited to permit implementation of the national major crime responsibilities identified by Congress. Kosrae v. Tosie, 4 FSM R. 61, 65 (Kos. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the national government and may be

prosecuted pursuant to the national law after the effective date of the amendment. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

Ever since the ratification of the constitutional amendment removed from Congress the power to define "major crimes" and substituted for it the power to define "national crimes" the national government has had no general criminal jurisdiction. That jurisdiction now lies with the states. In re Extradition of Jano, 6 FSM R. 93, 102 (App. 1993).

Congress has the express power to define national crimes, and until the Constitution was amended in 1991, Congress also had the express power to define major crimes. FSM v. Fal, 8 FSM R. 151, 153 (Yap 1997).

Since the FSM Constitution was amended in 1991, the national courts no longer have jurisdiction over major crimes. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

When the constitutional amendment to article IX, § 2(p) was ratified, it eliminated Congress's power to define major crimes and repealed by implication Title 11's major crimes provisions. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Major crimes jurisdiction was based upon defining a major crime by the severity of the penalty. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The 1991 constitutional amendment that changed the word "major" to the word "national" narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, having due regard for local custom and tradition. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

– Malicious Mischief

An essential element of the crime of malicious mischief is that the property injured or destroyed be the property of another. A good faith belief that one owns the property injured or destroyed typically constitutes a defense to the crime. Nelson v. Kosrae, 8 FSM R. 397, 402, 407 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The burden was on the government to establish beyond a reasonable doubt that defendants' interference with the crops at issue was unlawful; if there was any doubt about defendants' claim of right, defendants should have been acquitted on the malicious mischief charge. Nelson v. Kosrae, 8 FSM R. 397, 406-07 (App. 1998).

If defendants, in good faith, believe they can assert ownership rights over plantings made on their own land, they cannot be guilty of malicious mischief with respect to those plantings. Nelson v. Kosrae, 8 FSM R. 397, 407 (App. 1998).

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

The criminal offense of malicious mischief requires proof beyond a reasonable doubt of wilfully destroying, damaging or injuring property belonging to another. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

When testimony regarding the prior, good, and undamaged condition of the window screen and door latch is undisputed and testimony regarding the torn and damaged condition of the window screen and door latch after finding the defendant in the home is also undisputed, that is circumstantial evidence of the defendant's actions to damage the window screen and door latch and the court may infer from the evidence regarding the condition of the window screen and door latch before and after the defendant's entry into the home, that the defendant committed the damage to the window screen and door latch. Accordingly, the state proved beyond a reasonable doubt that the defendant did wilfully damage or injure property belonging to another and is guilty of the offense of malicious mischief. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

The offense of malicious mischief as wilfully destroying, damaging, or injuring property belonging to another. Kosrae v. Langu, 13 FSM R. 269, 272 (Kos. S. Ct. Tr. 2005).

– Misconduct in Office

In order to find an accused guilty of misconduct in public office, the court must find that the prosecution proved beyond a reasonable doubt that the accused 1) was a public official, and 2) he did an illegal act under the color of office, or he willingly neglected to perform the duties of his office as provided by law. Chuuk v. Robert, 16 FSM R. 73, 76, 78-79 (Chk. S. Ct. Tr. 2008).

A legislator who seeks to use representation fund monies for a medical referral, which is an impermissible purpose under the Representation Fund Act; who seeks to use Speaker and staff travel fund monies for a medical referral, which is neither permissible nor authorized; who altered the account and amount of his travel authorization request and submitted it for approval when it was not an authorized or permissible travel authorization; and who received the travel funds without the intention of using them for the approved travel, is guilty of misconduct in office. Chuuk v. Robert, 16 FSM R. 73, 79-80 (Chk. S. Ct. Tr. 2008).

– Misdemeanors

The government has no affirmative obligation to provide the defendant with information concerning misdemeanor offenses committed by its potential witnesses. FSM v. Cheida, 7 FSM R. 633, 641 (Chk. 1996).

The court may accept the statement of the charge or charges in a citation or a copy thereof in place of an information in any misdemeanor tried. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A felony is an offense punishable by more than one year in prison and a misdemeanor is an offense punishable by more than 30 days imprisonment and up to one year. FSM v. Wainit, 12 FSM R. 105, 109 n.2 (Chk. 2003).

Under previous law, a felony is an offense which may be punished by imprisonment for more than one year; a petty misdemeanor is an offense which may be punished by imprisonment for not more than 30 days; and every other offense is a misdemeanor. FSM v. Ching Feng 767, 12 FSM R. 498, 501 (Pon. 2004).

When, for the offenses charged, a defendant convicted of the crime cannot be subjected to any imprisonment, the offenses are classified as petty misdemeanors. FSM v. Ching Feng 767, 12 FSM R.

498, 501 (Pon. 2004).

Misdemeanors are offenses punishable by imprisonment for more than 30 days up to one year. Felonies are offenses punishable by more than one year in prison. FSM v. Wainit, 13 FSM R. 532, 536 n.1 (Chk. 2005).

Kosrae State Code §13.106(2)(b) imposes a requirement that prosecutions for misdemeanors begin with one year of when the alleged crime was committed. This statute recognizes that a misdemeanor prosecution commenced after one year generally infringes on a defendant's right to a speedy trial. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

The Kosrae State Court standard for measuring delay when filing an information and proceeding to trial is that the court presumes that there has been no unnecessary delay if the information is filed within six months of the alleged criminal act, but if the information is filed more than six months after the alleged act, then the prosecution must show that the delay in filing was reasonable or necessary. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Ten months' delay is in excess of what the Kosrae State Court would normally accept as reasonable or necessary for beginning the prosecution of misdemeanors allegedly committed in the presence of officers. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Under Pohnpei state law, a felony is defined as a crime or offense that may be punishable by imprisonment for a period of more than one year, and every other crime is a misdemeanor. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

Under Pohnpei state law, disorderly conduct is a misdemeanor since it carries a maximum of six months' imprisonment. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

– Motions

A motion to reopen a hearing will be denied where the movant does not demonstrate that he has learned of or located any new information after the hearing was closed. FSM v. Tipen, 1 FSM R. 79, 94 (Pon. 1982).

A written motion and notice of the hearing thereof shall be served, with a memorandum of points and authorities, not later than 14 days before the time specified for the hearing unless a different period is fixed by order of the court, and the moving party's failure to file a memorandum of points and authorities shall be deemed a waiver by the moving party of the motion. FSM v. Moses, 9 FSM R. 139, 143 (Pon. 1999).

Any defense, objection, or request which is capable of determination without the trial of the general issue may be made before trial by motion. Motions may be written or oral at the judge's discretion. FSM v. Moses, 9 FSM R. 139, 143 (Pon. 1999).

Generally, a motion to disqualify a prosecutor must be made at the earliest possible time, and failure to do so may constitute a waiver of the objection. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

Motions raising defenses and objections based on defects in the information (other than it fails to state an offense or the court lacks jurisdiction) must be raised prior to trial. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 2004).

By rule, timely receipt by the court would be ten days from date of service of the papers being responded to, if served personally, and sixteen days if served by mail. FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

A moving party's failure to file a memorandum of points and authorities in support of a motion is

deemed the moving party's waiver of the motion. FSM v. Moses, 12 FSM R. 509, 511 n.1 (Chk. 2004).

Movants cannot raise the claims of third parties; they may only raise their own claims. FSM v. Kansou, 12 FSM R. 637, 642 (Chk. 2004).

A written motion must be served with a memorandum of points and authorities. The moving party's failure to file the memorandum of points and authorities is deemed the moving party's waiver of the motion. When a party has waived his motion, there was no motion pending before the court. FSM v. Fritz, 13 FSM R. 88, 90 (Chk. 2004).

Service is incomplete when a defendant's response to a government motion is served only on the government and not on the other defendants because all filings are to be served on all other parties, including other co-defendants. FSM v. Kansou, 13 FSM R. 167, 168 n.1 (Chk. 2005).

Failure to respond in writing to a written motion is deemed a consent to the granting of the motion, and oral argument will not be heard from that party. FSM v. Kansou, 13 FSM R. 167, 169 n.2 (Chk. 2005).

A "brief" is in effect a motion when it asks the court for relief. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

A motion to disqualify the Attorney General's Office is a preliminary motion, which ought to be brought fairly early in the proceedings. Its filing should not wait until the deadline for filing all other pretrial motions. FSM v. Wainit, 13 FSM R. 433, 438 (Chk. 2005).

When the court has assumed, for the purpose of deciding the motion, that the defendant's allegations are true, the defendant's request for an evidentiary hearing to establish those allegations to support his motion will be denied. FSM v. Wainit, 13 FSM R. 433, 439 n.1 (Chk. 2005).

Considering that appointments of Acting Secretaries are a matter of public record and that defense counsel's office has two investigators and other staff on the Public Defenders' payroll on Pohnpei, the accuracy of the government's representation ought to be readily verifiable by the defense. To put the Public Defenders' Office to the expense of flying defense counsel to Chuuk from Yap and of flying witnesses from Pohnpei to Chuuk, to put the court to the expense of flying the judge to Chuuk from Yap, and to put the government to the expense of flying a prosecutor to Chuuk to hold an evidentiary hearing merely to establish when someone was Acting Secretary would be a waste of scarce resources and the defendant's request for an evidentiary hearing to establish those dates will therefore be denied. FSM v. Wainit, 13 FSM R. 433, 441 n.3 (Chk. 2005).

The FSM's motion in limine asking for an order barring all defendants from raising the certain defenses at trial will be granted when it was filed as a result of a defendant's response to its discovery request; when it was considered together with that defendant's motion asserting those same defenses; and when all defendants were served the motion but only one filed a response. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

On a motion to reconsider, the court will not consider the later affidavits of the three who were present at the hearing when they present no information located after the hearing was closed and there was no valid reason given why the government was unable to present the evidence at the hearing; but a fourth person's affidavit will be considered because he was unavailable before and during the hearing. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

An accused must raise the selective-prosecution claim at the pretrial motion stage. Defects in the institution of a prosecution, which is what a selective (or vindictive) prosecution would be, must be raised by motion before trial. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants' motions to dismiss based on selective or vindictive prosecution have been

denied for failure to establish a prima facie case, the government's motion in limine that the defendants be precluded from introducing at trial any testimony on or evidence of, or asserting, the defense of selective or discriminatory prosecution and of vindictive prosecution must be granted. FSM v. Fritz, 14 FSM R. 548, 555 (Chk. 2007).

A party opposing a motion has ten days after service of the motion to file and serve responsive papers and six days are added to this period when service is done by mail. The court may at its discretion enlarge the time for filing for cause shown, if a request for an enlargement of time is made prior to the expiration of the time period in which the responsive pleading itself is to be filed and if a request for enlargement of time is made after the expiration of the original time period in which the responsive pleading is itself due, then the enlargement of time may only be granted upon a showing of excusable neglect. Where no reason is given for late filing and an enlargement of time is never sought, responsive papers may be stricken from the record as untimely. FSM v. Zhang Xiaohui, 14 FSM R. 602, 608-09, 612 (Pon. 2007).

The moving and non-moving parties must conform to the same standard with respect to the content of a memorandum of points and authorities and must set forth the law upon which the party relies and his theory as to the application of that law to the facts of the case. No bright-line test is appropriate for determining what is a sufficient memorandum of points and authorities and a court necessarily assesses a memorandum's sufficiency on the facts and law of a given motion. Chuuk v. Sipenuk, 15 FSM R. 262, 264 n.1 (Chk. S. Ct. Tr. 2007).

The fugitive disentitlement doctrine is not limited only to appellate review of a criminal conviction or of a related civil forfeiture. It may also apply in trial court proceedings, such as pretrial motions made by fugitives in the trial courts. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A fugitive, in bringing motions, is trying to obtain favorable rulings from the court without risking any burden that may flow from an adverse ruling. If the rulings are unfavorable to him, he will remain a fugitive. Then, if the government wishes to pursue prosecuting him, it must go to the effort and expense of extraditing him assuming he has not fled to a jurisdiction with which the FSM does not have an extradition agreement. That bestows a benefit on the fugitive and violates the principle of mutuality and reaching the merits of a fugitive's pretrial motions may encourage others in the same position to take flight from justice. Thus his motions will be denied without prejudice. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

A fugitive's pending motions will all be denied without prejudice. Once he has submitted to the court's jurisdiction by returning, he may reurge any motion not previously denied on the merits. The fugitive will be afforded due process and his right to a fair trial once he has returned. FSM v. Jacob, 15 FSM R. 439, 443 (Chk. 2007).

The government has the burden of proving that an accused's statement is voluntary and thus admissible. Thus, although it was the defendant's motion to suppress, the government, because it has the burden, presented its side first at the suppression hearing. FSM v. Sam, 15 FSM R. 491, 492-93 (Chk. 2008).

Criminal Procedure Rule 12(a) abolished motions to quash an information, but any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by motion under Criminal Rule 12(b). Thus, if a motion to quash information is filed, it will be considered a Rule 12(b) motion to dismiss the information. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

Written motions must be supported by a memorandum of points and authorities and the moving party's failure to file the memorandum of points and authorities is deemed a waiver by the moving party of the motion. FSM v. Aiken, 16 FSM R. 178, 181 (Chk. 2008).

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2008).

A motion to suppress the evidence against an accused on the ground that the evidence was obtained as the result of "an arrest that was not in compliance with the law" is not sufficiently particular since it does not indicate the reason(s) why the accused asserts that the arrest was illegal. A suppression movant must articulate in his motion with sufficient particularity the specific reason on which he bases his claim that the seizure was illegal, and a written motion to suppress evidence must specify with particularity the grounds upon which the motion is based. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

The FSM rules have long required that written motions to suppress evidence be filed and decided before trial. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing. Furthermore, the pleading assists the court in the conduct of the hearing. For example, by enabling the court to determine the relevance of the offered evidence. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

At least as much specificity should be required in a pretrial objection to the admissibility of evidence, i.e., a motion to suppress, as is required in an oral objection made during the course of a trial. In fact, even more specificity could reasonably be required because the pretrial objection can be researched and written under relatively calm circumstances, as distinguished from an extemporaneous objection made in the heat of trial. Broadly worded and vague objections are inappropriate in either context. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

Since a general objection such as "illegal arrest" or "illegal search" made before trial will ordinarily present no basis for reversing a trial court's ruling, a "shot-gun" motion that contains only conclusory language such as "illegal arrest" and that fails to specify with any particularity why his arrest was illegal could be denied without hearing on that ground alone. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

An oral motion to dismiss the case because the prosecution, by not putting on any witnesses or evidence, failed to establish a prima facie case against the accused at the hearing will be denied when the hearing was not a preliminary examination or an initial appearance, or some other proceeding at which the government is required to make a prima facie showing of the case against the defendant but was a pretrial hearing on the defendant's Rule 12(b)(2) and (3) motions – motions alleging defects in the information and to suppress evidence. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

Since, under Kosrae Criminal Rule 12, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, this rule encompasses a motion raising a statute of limitations defense. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

A motion to suppress is both belated and premature when it is belated because it was filed after the deadline for filing pre-trial motions and when it is premature because there is no indication from the court record or from the motion that the government intends to produce at trial the evidence that the defendant seeks to suppress. Without any indication that the government intends to produce that evidence at trial, the court is unable to discern what, if any, evidence may be subject to suppression. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

The authority for filing a motion to suppress is provided for by Criminal Rule 12(b)(3), which requires that a motion to suppress must be raised prior to trial. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

When there is no indication that the government intends to produce at trial the evidence sought to be suppressed, and until the government specifies that it intends to produce that evidence at trial, a motion to suppress that evidence is premature. The procedures set forth in Rules 12 and 16 need, as appropriate, to be followed before the court can reasonably address such issues. Chuuk v. Karen, 16 FSM R. 250, 252 (Chk. S. Ct. Tr. 2009).

A "shot-gun" motion that contains only conclusory language and that fails to specify the grounds with any particularity can be denied without hearing on that ground alone. FSM v. Aliven, 16 FSM R. 520, 526 (Chk. 2009).

Since the government has the burden of proof to prove by a preponderance of the evidence that the defendants' statements were admissible; it presented its side first on the issue. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

A motion made before trial must be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after finding, but no such determination can be deferred if a party's right to appeal is adversely affected. When factual issues are involved in determining a motion, the court must state its essential findings on the record; otherwise, the court is required to exercise sound judicial discretion in considering a request for dismissal that requires that the court have factual information supporting the request. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

FSM Criminal Rule 12(a) abolishes motions to quash an information. However, since under FSM law any relief possible under the common law motions and pleas abolished by Rule 12(a) may be sought by pretrial motion under FSM Criminal Rule 12(b), the court will consider a defendant's motion to quash the information as a Rule 12(b) motion to dismiss the information. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When the government has filed no response to a defendant's motion, it will not be permitted to present argument on the motion. FSM v. Phillip, 17 FSM R. 413, 425-26 (Pon. 2011).

A motion requesting a chamber conference is defective when it specifies neither a legal ground nor the relief or order sought, as required under Chuuk Criminal Rule 47. The court does not entertain motions for the purposes of "discussing concerns." Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

The time to raise issues regarding probable cause is immediately after arrest, preferably at the initial appearance, arraignment, or, upon motion, at a probable cause hearing. It is not approximately one month before trial is scheduled to begin. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

Pretrial motions are governed by Criminal Procedure Rule 12. Under that rule, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, and certain motions must be raised before trial or they are deemed waived. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A pretrial motion is generally capable of determination before trial if it involves questions of law rather than fact. A defense is thus capable of determination if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

As a general matter, the question of whether or not a particular defense may be raised by means of a Rule 12(b) motion turns on whether or not that defense may be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Under Rule 12(e), the court must decide a pretrial motion before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue. Good cause for deferral exists

only if facts at trial will be relevant to the court's decision. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

The trial court must rule on any issue entirely segregable from the evidence to be presented at trial, but may in its discretion defer a ruling on any motion that requires trial of any nontrivial part of the general issue – that is, presentation of any significant quantity of evidence relevant to the question of guilt or innocence – on the ground that it requires trial of the general issue for purposes of Rule 12(b). FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

Most defenses, such as self-defense, insanity, and entrapment require factual determinations that make pretrial disposition inappropriate. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

A motion to dismiss is not the proper way to raise a factual defense because if the pretrial claim is substantially founded upon and intertwined with evidence concerning the alleged offense, the motion must be deferred because it falls within the province of the factfinder at trial. FSM v. Semwen, 18 FSM R. 222, 225 (Chk. 2012).

An accused's self-defense claim is a factual defense substantially founded upon and intertwined with evidence about the alleged offenses that requires trial of the general issue of the accused's guilt or innocence and that cannot be decided solely on issues of law. FSM v. Semwen, 18 FSM R. 222, 226 (Chk. 2012).

Even though it was filed eleven days after the motion it opposed, when an opposition was filed on the deadline that the court otherwise directed in its scheduling order, it was timely filed and it will not be stricken. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

A motion styled a motion in limine that requests the court's permission under Rule 15 to depose a witness outside of the jurisdiction is misnamed because a motion in limine is a pretrial request that certain inadmissible evidence not be referred to or offered at trial. Chuuk v. Emilio, 19 FSM R. 33, 35 n.1 (Chk. S. Ct. Tr. 2013).

The Department of Justice's involvement in the government's relief efforts following Typhoon Maysak, which may have been the strongest typhoon to hit this area in the last 100 years, constitute excusable neglect for its delay in filing an opposition six days late. FSM v. Itimai, 20 FSM R. 131, 133 (Pon. 2015).

When the government has shown excusable neglect for its tardiness because its Department of Justice needed to assist in emergency relief in Typhoon Maysek's aftermath, the court will excuse the late filing of its response to the defendants' motion. FSM v. Kimura, 20 FSM R. 297, 300 n.1 (Pon. 2016).

– Motions – Unopposed

Failure by the non-moving party to respond to the motion constitutes a consent to the granting of the motion, but even if a motion is unopposed, a court still needs good grounds before the motion may be granted. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

Failure to oppose a motion is generally deemed a consent to the motion and a party who has failed to oppose will not be permitted to orally argue the motion. But even when there is no opposition, a court still needs good grounds before it can grant the motion. FSM v. Wainit, 12 FSM R. 360, 362 (Chk. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, a court still needs good grounds before it can grant the motion. But when the motion seeks the same relief, makes much the same arguments, and rests on much the same grounds as a motion that has been opposed, the court will consider the two motions together and the responsive filings as being applicable to both. FSM v. Wainit, 12 FSM R. 376, 379 (Chk. 2004).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

When no opposition has been filed, it is generally deemed a consent to the motion, but even without an opposition, a court still needs good grounds before it can grant the motion. FSM v. Wainit, 12 FSM R. 405, 408 (Chk. 2004).

Although failure to oppose a motion is generally deemed a consent to a motion, even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

Although a motion to dismiss stands unopposed, and while failure to oppose a motion is generally deemed a consent to the motion, the court still needs good grounds before it can grant the motion. FSM v. Zhang Xiaohui, 14 FSM R. 602, 609, 613 (Pon. 2007).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

When the government has filed no response to a defendant's motions, it will not be permitted to present argument on the motions. FSM v. Kansou, 15 FSM R. 373, 378 (Chk. 2007).

Failure to oppose a motion is generally deemed a consent to the motion. But even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Kansou, 15 FSM R. 373, 378 (Chk. 2007).

Even though failure to timely oppose a motion is deemed consent to the motion, a court still needs good, proper grounds before it may grant the motion. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

Failure to oppose a motion is generally deemed a consent to the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. FSM v. Suzuki, 17 FSM R. 114, 115 (Chk. 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).

A moving party's failure to file the memorandum of points and authorities is deemed the moving party's waiver of the motion. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

A non-moving party's failure to respond to a motion constitutes a consent to the granting of the motion. However, even if a motion is unopposed, the court still needs good grounds before the motion may be granted. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

A moving party's failure to file a memorandum of points and authorities will be deemed the moving party's waiver of the motion. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

Failure to oppose a motion is generally deemed a consent to the motion, but even when there is no opposition, a court still needs good grounds before it can grant the motion. FSM v. Phillip, 17 FSM R. 595, 597 (Pon. 2011).

Regardless of whether a motion is unopposed and thus deemed consented to, the court must still evaluate the motion's merits and can only grant it if there are good grounds for it. FSM v. Semwen, 18 FSM R. 222, 224 (Chk. 2012).

Failure to timely oppose a motion, even a motion to enlarge time, is generally deemed a consent to the motion. FSM v. Itimai, 20 FSM R. 131, 133 (Pon. 2015).

Although the government did not file a response to the defendant's motion, it was allowed to orally respond to the motion during the hearing because the defendant did not oppose the government's participation. FSM v. Bisalen, 20 FSM R. 471, 472 (Pon. 2016).

While failure to oppose a motion is generally deemed a consent to the motion, even then the court still needs good grounds before it can grant an unopposed motion. FSM v. Fritz, 20 FSM R. 596, 598 (Chk. 2016).

When a party has failed to respond in writing to a written motion, oral argument will generally not be heard from that party, but the court may decide to permit a limited oral response on the assurance that the party's arguments would not stray outside the scope of the movant's arguments. FSM v. Fritz, 20 FSM R. 596, 598 (Chk. 2016).

– Motions for Acquittal

In stating that the prosecution's burden was to present a "prima facie" case, the trial court did not apply an incorrect standard in deciding an FSM Criminal Rule 29 motion for judgment of acquittal. Andohn v. FSM, 1 FSM R. 433, 437-38 (App. 1984).

An ordinary reading of FSM Criminal Rule 29 would require that the prosecution's case warrant a finding of guilt beyond a reasonable doubt, or else a motion for judgment of acquittal should be granted. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

In deciding a motion for a judgment of acquittal, the question is not whether the government has proved its case beyond a reasonable doubt. The proper question is whether from the evidence presented, a reasonable fact finder *could* find guilt beyond a reasonable doubt. Andohn v. FSM, 1 FSM R. 433, 441-42 (App. 1984).

In deciding a FSM Criminal Rule 29 motion for judgment of acquittal, it is not required that the evidence presented *compel*, but only that it be *capable of* persuading the trial fact finder to reach a verdict of guilt by the requisite standard. Andohn v. FSM, 1 FSM R. 433, 442 (App. 1984).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v.

Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The standard of review that a court uses in considering a renewed motion for acquittal under Criminal Rule 29(c) is whether the evidence could "sustain" a conviction, i.e., such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the factfinder to reach a verdict of guilt by the requisite standard. FSM v. Fritz, 13 FSM R. 85, 86 (Chk. 2004).

As a matter of due process, to sustain a conviction, the government must prove each element of an offense charged beyond a reasonable doubt. To sustain a charge against a Rule 29 motion for acquittal, however, it is not a requirement that the evidence compel a guilty verdict "beyond a reasonable doubt," only that it is adequate and sufficient to support a "prima facie" case. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

In ruling on a Rule 29 motion, the proper inquiry is not whether the government has proved its case beyond a reasonable doubt, but whether there has been evidence presented that could persuade a reasonable person, viewing the evidence and reasonable inferences therefrom in the light most favorable to the prosecution, of guilt beyond a reasonable doubt. Chuuk v. William, 15 FSM R. 483, 487 (Chk. S. Ct. Tr. 2008).

For the purposes of motions for acquittal, the government has presented sufficient evidence of the requisite intent to satisfy that element of the murder charges when the defendants' use of dangerous weapons to repeatedly beat the victim alone creates a strong inference of the requisite intent and when there is evidence sufficient to support the specific intent requirement for murder based on the prolonged duration of the beating and other attendant circumstances arising after the victim's initial assault. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

When an adjudication on the merits has not yet occurred and the case is still in the pretrial stage, a defendant's motion for acquittal on insanity grounds is premature and will be denied without prejudice since the FSM Code requires that, if a defendant is acquitted on the grounds of physical or mental disorder, the verdict and judgment must so state and since the court cannot issue a verdict and judgment until after a trial on the merits, during which the prosecution must prove beyond a reasonable doubt all elements including intent. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

The standard used in considering a Rule 29(a) motion for acquittal is not whether the evidence is insufficient for the court to find that each of the elements of the crimes the accused is charged with committing was proven beyond a reasonable doubt and the question is not whether the government has proved its case beyond a reasonable doubt. Instead, the proper question is whether the evidence could "sustain" a conviction, i.e., such evidence that reasonable persons could find guilt beyond reasonable doubt. It is not a requirement that the evidence compel, but only that it is capable of or sufficient to persuade the factfinder to reach a verdict of guilt by the requisite standard. FSM v. Sonis, 18 FSM R. 620, 621 (Chk. 2013).

When there is evidence that could sustain a conviction because there is evidence that reasonable persons could find guilt beyond reasonable doubt on each of the counts, a motion to acquit will be denied for each count. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

– National Crimes

The prosecution of criminals is not a power having an indisputably national character. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

The Constitution, as amended, expressly delegates to Congress the power to define national crimes and prescribe penalties. Congress enacted the Revised Criminal Code Act, as amended, pursuant to this constitutional power. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Congress defined crimes against persons as inherently national when they are committed against national public servants, if the crime is sufficiently connected with national public servants' performance of their duties. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

An assault against a national public servant at the national government capitol complex in Palikir, in the middle of a workday, in the National Public Auditor's Office demonstrates precisely the national government's interests that Congress sought to protect by defining a crime against a national public servant in the course of the public servant's employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Congress acted constitutionally and within its power to define national crimes when it defined a crime against a national public servant in the course of employment as a national crime. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

When a very strong nexus exists in this case between the defendant's alleged criminal conduct and the victim's employment as a national public servant because it was a crime of violence perpetrated on government property, against a government employee who was conducting official government business, it should be the national government that determines the penalty for that conduct and punishes that conduct. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

The 1991 constitutional amendment that changed the word "major" to the word "national" narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, having due regard for local custom and tradition. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The 1991 constitutional amendment that removed national government jurisdiction over major crimes did not remove national government jurisdiction over firearms and ammunition possession under the Weapons Control Act since there was an independent jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses and Congress has always had the power to define national crimes. Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

Congress's power to define national crimes is generally restricted to three areas: 1) actions occurring in places where the national government has jurisdiction; 2) actions involving an instrumentality of the national government; and 3) actions involving an activity or function that the national government has the power to regulate. Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

The national government can regulate firearms and ammunition possession since there is an

international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders and on the additional jurisdictional basis rooted in the national defense clause. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

There is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

Even if Congress took no position on its jurisdiction based on Article IX, Section 2(a), the court is well within its power to determine jurisdiction based on this constitutional provision when it is not a situation where the action of the government is being challenged for attempting to implement a non-self-executing provision of the Constitution, but is one where the court determined what authority Congress had to enact statutes regulating the possession of firearms and ammunition. In doing so, the court did not usurp the powers of Congress. Jano v. FSM, 12 FSM R. 633, 635 (App. 2004).

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).

In an examination to determine whether it is a national crime, the focus is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Congress has always had the power to define national crimes. The power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

A contention that the FSM Supreme Court lacks subject matter jurisdiction over a case's firearms charges because there was no nexus between those charges and the national government's powers to regulate interstate and foreign commerce and to provide for the national defense or because national defense and foreign or interstate commerce was not involved or not implicated in the case is without merit. FSM v. Sam, 15 FSM R. 457, 459-60 (Chk. 2007).

When a "national offense" is defined as including any offense "which is otherwise an offense against the Federated States of Micronesia" and the underlying offenses involve improper obligation and expenditure of FSM funds and tampering with FSM official documents and information, it is difficult to see how these offenses could not be considered offenses against the FSM and an argument that they are not will be rejected. Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The use of a firearm to commit a Chuuk state law crime, such as robbery, is a national offense even though the robbery itself is not a national offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

Exclusive national jurisdiction over a trespass and theft at the Chinese Embassy is proper under 11 F.S.M.C. 104(7)(a)(ii) as an otherwise undefined national crime, but jurisdiction is not proper under 11 F.S.M.C. 104(7)(a)(i) where an exclusive list of national crimes is defined. FSM v. Ezra, 19 FSM R. 486, 494 (Pon. 2014).

Jurisdiction under 11 F.S.M.C. 104(7)(a)(i) cannot be supported for the misdemeanor crime of trespass or theft at the Chinese Embassy because the trespass and theft were not committed in the FSM's exclusive economic zone, or its the airspace, or oceans; because it was not a retaliation, or breach of fiduciary responsibility by a public servant; or because it was not against property belonging to the FSM national government, or against people participating in an election. FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

Exclusive jurisdiction for undefined national crimes can be found under in 11 F.S.M.C. 104(7)(a)(ii) which states that national jurisdiction is proper for any crime that is "otherwise a crime against the Federated States of Micronesia." FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

The test for what constitutes a crime under 11 F.S.M.C. 104(7)(a)(ii) is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? Alternatively stated, a national crime is one that is committed in some place where the national government has jurisdiction, or that involves a national government instrumentality, or involves an activity that the national government has the power to regulate. FSM v. Ezra, 19 FSM R. 486, 495 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because the power to create, enforce, and interpret treaties is exclusively an activity or function that the national government has power to regulate; because a power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power; because the President has the duty to enforce and conduct foreign affairs under national law; because Congress has the duty to ratify treaties; because the national Supreme Court the duty to interpret and adjudicate international treaties; because the nature of the expressly delegated powers in the Constitution's article IX, § 2, calls for a uniform nationally coordinated approach; and because if a power is of an indisputable national character such that it is beyond state's power to control, that power is to be considered a national power. FSM v. Ezra, 19 FSM R. 486, 495-96 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because ambassadors, and all foreign officials, are explicitly intended to be protected by the national government and breaching of an embassy's sanctity affects the personal residence of the ambassador, and directly affects the ambassador's staff, many of whom are legally protected foreign officials; because, although the embassy's physical premises are not explicitly listed in the Constitution as protected property they are necessarily, and implicitly, included within relationship with the ambassador and other foreign diplomats; because the duty of protecting the physical diplomatic mission is an express requirement of the agreement between the FSM and China and the Vienna Convention, statutorily incorporated by reference, requires the protection of the embassy itself; and because this is of an indisputably international character, a fortiori of a national character, and therefore beyond the reach of the state power to control. FSM v. Ezra, 19 FSM R. 486, 496 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

The FSM Supreme Court has exclusive jurisdiction over the prosecution of national crimes. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

A national crime is statutorily defined as any crime which is inherently national in character and defined anywhere in Title 11, or otherwise a crime against the FSM. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

A crime is "inherently national in character" when the crime is committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty or when the crime involves property belonging to the national government. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

When all of the acts and omissions a defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty; when those acts may also be a violation of his fiduciary duty; and when national government property – \$926 in Maritime Operations Revolving Fund money – was involved, the information alleges national crimes. FSM v. Itimai, 20 FSM R. 131, 134 (Pon. 2015).

Since the FSM Supreme Court has jurisdiction over crimes committed by a national public official or public servant while that person is engaged in his or her official duties or in violation of a fiduciary duty, it will not dismiss a case where all of the acts and omissions the defendant is accused of committing, he did as a national government official or public servant while he was engaged in his official duty. FSM v. Itimai, 20 FSM R. 232, 235 (Pon. 2015).

– New Trial

On a defendant's motion, the court may grant a new trial to that defendant if required in the interests of justice. When the motion is not brought on the ground of newly-discovered evidence, the other grounds on which a motion for a new trial may be granted are if the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, or for any error of sufficient magnitude to require reversal on appeal. FSM v. Fritz, 13 FSM R. 85, 87 (Chk. 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).

When the prosecution has volunteered to provide prior witness statements before trial, a mistrial will be declared if the prosecution's failure to provide the Chuukese language witness statements before trial prejudiced the defendant. The failure to produce prior witness statements is analyzed under a strict harmless error standard. Since courts cannot speculate whether the statement of the witness could have been utilized effectively at trial, the harmless error doctrine must be strictly applied in these cases. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The proper standard in negligent nondisclosure cases should call for a new trial whenever the nondisclosed evidence might reasonably have affected the factfinder's judgment on some material point, without necessarily requiring a supplementary finding that it would also have changed its verdict. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

The purpose of production of witness statements is to give defendants impeachment materials at a time when they can effectively use them. When the prosecution has failed to timely provide the statements, that objective can be fulfilled by the grant of a mistrial because when the denial of an opportunity to impeach a prosecution witness's highly damaging testimony is caused by the breach of the prosecutor's duty to produce the witness's prior statement, a new trial is necessitated. FSM v. Walter, 13 FSM R. 264, 268 (Chk. 2005).

A defendant whose trial ended in a mistrial is entitled to a new trial, but not a new judge. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

– Obstructing Justice

The offense of obstructing justice requires proof beyond a reasonable doubt of resisting or interfering with a police officer in the lawful pursuit of his duties. The intent of the statute is that the police should be able to perform their official duties, including the arrest of an accused, without any obstacles, obstructions or hindrances placed in their way. Arresting a person is within scope of employment and within the lawful pursuit of a police officer's duties. Kosrae v. Nena, 12 FSM R. 525, 528 (Kos. S. Ct. Tr. 2004).

The term "interfere" means to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty. Defendants' actions in contacting, holding and pulling up a person while an officer was attempting to arrest him, did hamper or hinder the officer in the performance of his legal duty. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

The offense of obstructing justice does not require force. However, the use of force, as distinguished from the use of words, is obviously sufficient. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Mere threats are not sufficient to constitute obstruction of justice. However, threats, accompanied by a show of force, are sufficient to constitute the offense. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Arguments with or criticism of a police officer, without any other action, is generally not sufficient to constitute the offense. For example, demanding that the officers properly identify themselves and show an arrest warrant, is not adequate for the offense of obstructing justice. Kosrae v. Nena, 12 FSM R. 525, 529 (Kos. S. Ct. Tr. 2004).

Under common law, a person may resist a lawful arrest if the arresting officer uses unreasonable force. After careful consideration of public policy and the constitutional protection of individual rights, including protection against arrests involving excessive force, the Kosrae State Court recognizes and accepts the application of the defense. A police officer has a right to use force reasonably necessary to effectuate an arrest. The reasonableness of a police officer's conduct while making an arrest must be assessed on the basis of information that the police officer had when he acted. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

When an arrestee was intoxicated and the arresting officer restrained and held the arrestee with a technique that he had been trained in to subdue intoxicated persons; when he did not use any weapons to subdue the arrestee; when the arrestee was not injured and did not receive any medical treatment for any injuries received; when the arrestee was not in danger of death or great bodily harm from the action in restraining him, the officer's conduct in making the arrest was reasonable based upon the information available to him when he acted and therefore he used the reasonable force necessary in trying to subdue, hold, and arrest the arrestee. Therefore the defendants' defense of resisting the arrest of another where the arresting officer uses unreasonable force, must fail. Kosrae v. Nena, 12 FSM R. 525, 530 (Kos. S. Ct. Tr. 2004).

Under Pohnpei law, every person who unlawfully resists or interferes with any law enforcement officer in the lawful pursuit of his duties, or who unlawfully tampers with witnesses or attempts to prevent their attendance at trials, is guilty of obstructing justice. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Since the police may arrest without a warrant persons who are in the process of committing an offense in their presence, when the trial court found as fact that a person had, in the presence of the police, been argumentative; had prevented them from gaining access to her husband, who they had reasonable suspicion to stop and to whom they wanted to talk about a car abandonment; and that when a sergeant arrested her it was for obstructing justice and for pushing him in the chest and when these facts remain the facts on appeal, the facts, viewed from the law enforcement officers' vantage point, would constitute probable cause for an arrest on an obstructing justice charge. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

– Pardon

The English version of the Pohnpei Constitution gives the Governor the power to commute a sentence and to grant a pardon (though the Pohnpeian version restricts that power to felony cases); and both versions are silent on the power to grant parole. Pohnpei v. Hawk, 3 FSM R. 17, 23 (Pon. S. Ct. Tr. 1986).

In one line of cases, the United States Supreme Court held that the presidential power to pardon includes the power to commute a sentence even if not specifically provided for by statute, as long as the conditions do not offend the Constitution; in another line of case, however, the court holds that Congress may vest the power to commute by statute. This latter line, requiring legislative enactment, should be adopted by the Pohnpei state court system. Pohnpei v. Hawk, 3 FSM R. 17, 24 (Pon. S. Ct. Tr. 1986).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

While a person's assertion that, given his rehabilitation over time, and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

A Presidential pardon restores a person's basic civil rights. FSM v. Innocenti, 20 FSM R. 293, 295 (Pon. 2016).

The court lacks the authority to order expungement of the record of a valid and unchallenged conviction even though the defendant has been pardoned since a pardon does not create the factual fiction that the crime was never committed. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

A Presidential pardon restores a convicted felon's basic civil rights. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The court does not have the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The Constitution permits Congress, and only Congress, to change, by statute, the constitutional provision disqualifying a person convicted of a felony from membership in Congress, and Congress so far has not seen fit to alter this qualification. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Congress itself always has the final say over the election and qualification of its members, and, unless Congress acts to change the qualifications, a person convicted of a felony and later pardoned is still ineligible for Congress membership. FSM v. Fritz, 20 FSM R. 596, 600-01 (Chk. 2016).

If a Presidential pardon automatically entitled the pardoned person to an expungement of his criminal record, then the executive branch would have the power to interfere with the record-keeping of another co-equal branch of government (the judicial branch) while also preventing still another co-equal branch of government (Congress) from access to the judicial branch's records that would assist it in its constitutional duty to be the sole judge of the qualification of its members. FSM v. Fritz, 20 FSM R. 596, 601 (Chk. 2016).

– Parole

The National Criminal Code preserves the President's parole powers for offenses committed before the Code's effective date; the repeal of parole powers applies only to offenses committed thereafter. Tosie v. Tosie, 1 FSM R. 149, 151, 158 (Kos. 1982).

The English version of the Pohnpei Constitution gives the Governor the power to commute a sentence and to grant a pardon (though the Pohnpeian version restricts that power to felony cases); and both versions are silent on the power to grant parole. Pohnpei v. Hawk, 3 FSM R. 17, 23 (Pon. S. Ct. Tr. 1986).

The parole statute, 11 F.S.M.C. 1401, does not mandate, but merely authorizes, review of sentences for the purpose of determining parole eligibility. Yalmad v. FSM, 5 FSM R. 32, 33 (App. 1991).

When considering parole a justice shall request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution of the prisoner, such community leaders as clergy and municipal and village leaders when determining a prisoner's eligibility for parole. The justice shall also base his determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chance for successful adaptation to community life after release. Yalmad v. FSM, 5 FSM R. 32, 33-34 (App. 1991).

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, 11 F.S.M.C. 1401. Yalmad v. FSM, 5 FSM R. 32, 34 (App. 1991).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. Kimoul v. FSM, 5 FSM R. 53, 60-61 (App. 1991).

If a motion were considered to be a parole application based on the defendant having served $\frac{1}{2}$ of his sentence then it would have to be denied, with leave to renew within 30 days, for failure to follow the proper procedures and supply the proper information. FSM v. Akapito, 11 FSM R. 194, 196 (Chk. 2002).

The Kosrae Parole Board must consider any written statements and recommendations of the presiding justice. If one is not in the file, the Board, upon receipt of a parole petition, will serve a written notice on the presiding justice, who may, in his sole discretion, submit or decline to submit a written statement or recommendation. If no written statement and/or recommendation is received by the Parole Board from the presiding justice within the specified 10 day period, the Parole Board shall so state in its submission to the Governor. Phillip v. Kosrae State Parole Bd., 11 FSM R. 331, 332-33 (Kos. S. Ct. Tr. 2003).

The Kosrae Parole Board will not consider any verbal statements made by the presiding justice. Phillip v. Kosrae State Parole Bd., 11 FSM R. 331, 333 (Kos. S. Ct. Tr. 2003).

Since the parole statute requires the court to request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders, the court must request that the prosecution express its views. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

The parole statute requires that the justice reviewing a parole application "base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release." The statute (and the parole review procedural rule that implements it) limits the reviewing justice to considering just those, and no other, factors. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

Since the parole statute requires that the court request and consider the views of the prosecution, the prisoner and his counsel, the victim or head of the victim's family, and, when requested by the prosecution or the prisoner, such community leaders as clergy and municipal and village leaders, when the prisoner's request expresses the prisoner's views and the views of some community leaders and the Chuuk Chief of

Correction the court will ask that the prosecution and the Chuuk Director of Public Safety express their views on the prisoner's parole request. FSM v. Aki, 15 FSM R. 282, 283 (Chk. 2007).

The statute requires that the justice reviewing a parole application base his or her determination upon the prisoner's behavior in prison and any factors indicative of the prisoner's chances for a successful adaptation to community life after release. The statute (and the parole review procedural rule that implements it), limits the reviewing justice to considering just those two, and no other, factors. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

That while the prisoner was on pretrial release in another criminal case, he committed the offense for which he is now serving a jail sentence from which he seeks parole, is not relevant to the prisoner's parole application since it occurred before he was convicted and sentenced to prison. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

A prisoner's violation of his work release conditions must be considered to be "behavior in prison" within the meaning of the parole statute because it occurred while he was serving his jail sentence, and, since it occurred while the prisoner was on work release, it also has some bearing on whether he can successfully adapt to community life after release. It therefore must have some effect on the court's decision on the prisoner's parole application. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

If the court denies a prisoner's parole request, the prisoner cannot apply for parole again until one year has passed after the entry of the denial order. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

Instead of denying a parole request, the court may grant it and delay its effective date. FSM v. Aki, 15 FSM R. 282, 284 (Chk. 2007).

The Parole Rules require the applicant to file an original and three copies and also require the parole application to be accompanied by proof of service on not only the prosecutor or prosecuting authority, but also on the person or persons in charge of any facility where the prisoner has been incarcerated for 30 days or more during the sentence he is requesting to be reviewed, the victim of the crime or at least one member of the victim's immediate family if the victim is deceased, and the prisoner's village or municipal leaders. When a parole request does not comply with these requirements, the court may deny the request for failure to comply with the parole request procedure and may, at its discretion, notify the prisoner of the inadequacies and grant him one or more 30-day extensions within which to file a renewed request that properly complies with the parole rules. FSM v. Karen, 16 FSM R. 22, 23 (Chk. 2008).

The parole rules bar repetitive requests. A prisoner whose request for parole has been denied (either before or after review) is not permitted to file another request until one year after the entry of the order denying the request for review or denying modification of sentence following review. FSM v. Karen, 16 FSM R. 22, 23-24 (Chk. 2008).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

– Pleas

The trial judge did not actively participate in plea negotiations when he did nothing other than judicially review and comment upon a proposed plea agreement prepared solely by counsel and parties and then voluntarily submitted by counsel to the court. FSM v. Skilling, 1 FSM R. 464, 478-79 (Kos. 1984).

A trial judge cannot be said to have negotiated with the parties concerning a proposed plea when he did not in any way suggest that the defendant plead guilty, made no efforts to encourage either party to enter into a plea agreement or to pursue further negotiations, offered no promise to accept any agreement ultimately arrived at, nor was present at any plea agreement negotiations. FSM v. Skilling, 1 FSM R. 464, 479 (Kos. 1984).

The plea bargaining process contemplates that plea agreements will be submitted to the trial judge for acceptance or rejection. When counsel place documents before a court either voluntarily or as part of standard court procedures under circumstances where the court is normally expected to comment judicially on the documents, the court's response may not customarily be used as a basis for judicial disqualification. FSM v. Skilling, 1 FSM R. 464, 480-81 (Kos. 1984).

Submission of a proposed plea agreement to the court is intended to elicit from the court some indication of an acceptable sanction, assuming that the defendant will admit guilt. The court's statement as to an acceptable penalty does not denote its belief of defendant's guilt. FSM v. Skilling, 1 FSM R. 464, 482 (Kos. 1984).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

A defendant's violation of his plea agreement after the agreement was filed with, and accepted by, the court, but before sentencing by the court, may serve as the basis for court punishment of the defendant. Based upon that violation, the court may accept the defendant's plea of guilty to the crime, although the plea agreement provides for the court to defer acceptance of the plea. FSM v. Dores, 1 FSM R. 580, 584 (Pon. 1984).

FSM Criminal Rule 11(e)(1)(C) calls for implementation of a plea agreement's terms by the court if the court accepts the agreement. When the court accepts, the defendant, the prosecution and the court are all bound to carry out the terms of the plea agreement. The defendant is entitled to the benefit of the bargain reflected in the plea agreement and the government is likewise entitled to enforce the defendant's promises. FSM v. Dores, 1 FSM R. 580, 587 (Pon. 1984).

Considerations of fairness and mutuality, as well as sound policy, require that a defendant who enters into a plea agreement be subject to punishment when he violates the terms of his agreement. FSM v. Dores, 1 FSM R. 580, 588 (Pon. 1984).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

A plea agreement calling for dismissal or reduction of charges pending in criminal litigation is contingent upon court approval. Until such approval, neither party is bound by the agreement and neither party can enforce it against the other. FSM v. Ocean Pearl, 3 FSM R. 87, 92 (Pon. 1987).

A plea agreement is not fixed until the court has acted upon it in all particulars and has fixed all conditions and explained them to the defendant. Dores v. FSM, 3 FSM R. 155, 158 (App. 1987).

A duty imposed on the trial court by Rule 11(e)(5) of the FSM Rules of Criminal Procedure to protect the defendant by assuring that there is a factual basis for the plea, may be breached only if the trial court should "enter a judgment" without finding a factual basis. In re Main, 4 FSM R. 255, 259 (App. 1990).

Default judgments are unknown in criminal law. Guilty pleas by a defendant require compliance with formalities designed to insure that the accused receives due process. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.3 (App. 1996).

A criminal defendant, having pled not guilty at arraignment, is not required to abandon that plea upon conviction. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 9 (App. 1997).

A Rule 32(d) motion can be granted if the defendant failed to understand the direct consequences of

his plea with regard to sentencing, but failure to comprehend the collateral consequences of a plea is not grounds for the granting of a Rule 32(d) motion. The fact that the defendant, upon pleading guilty to a felony, would be precluded from becoming a candidate for public office is a collateral consequence of the plea. Felons lose privileges available to those who do not commit crimes. Loss of these privileges of good citizenship is simply not grounds for vacating a conviction. Trust Territory v. Edgar, 11 FSM R. 303, 307 (Chk. S. Ct. Tr. 2002).

The term "nolo contendere" is a Latin phrase meaning "I will not contest it." It is a plea which has a similar legal effect as pleading guilty. The plea of nolo contendere has been described as a confession, implied confession, admission of guilt of all facts pleaded, conviction, and a guilty plea. A plea of nolo contendere is considered the functional and substantive equivalent of a guilty plea. Kosrae v. Tulensru, 14 FSM R. 115, 123 (Kos. S. Ct. Tr. 2006).

The principal difference between a plea of guilty and a plea of nolo contendere is that the plea of nolo contendere may not be used against the defendant in a civil action based upon the same acts. A plea of nolo contendere admits for the purpose of the criminal case all the elements of the offense charged against the defendant, and gives the court complete power to sentence the defendant for that offense. Kosrae v. Tulensru, 14 FSM R. 115, 123 (Kos. S. Ct. Tr. 2006).

A judge's involvement in plea discussions in violation of Rule 11(e)(1) is plain error. One of the principles behind the rigid enforcement of Rule 11(e)(1), is to protect the integrity of the judicial process so that the judge's impartiality and objectivity shall not be open to any questions or suspicions when it becomes his duty to impose sentence. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

The government attorney and the defendant's attorney may engage in discussions with a view toward reaching a plea agreement. The court shall not participate in any such discussions. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

A conference, which counsel sought and at which they discussed their impasse in plea negotiations and presented the case and their positions to the trial judge is an improper and inappropriate procedure. Counsel should not ask the court to give any opinion on a possible plea agreement until a final agreement is properly presented to the court in its entirety. Kinere v. Kosrae, 14 FSM R. 375, 387-88 & n.9 (App. 2006).

A judge's indication of sentence necessarily constitutes participation in such [plea agreement] discussions. Rule 11(e)(1)'s command with regard to plea negotiations is simple and admits of no exceptions: the court shall not participate in any such discussions. Rule 11(e)(1) is an absolute prohibition on all forms of judicial participation in or interference with the plea negotiation process. The court's role is to evaluate a plea agreement once it has been reached by the parties and discussed in open court. Prior to that time, a court should not offer comments touching upon proposed or possible plea agreements. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

Rule 11 means what it says: the court shall not participate in any plea negotiations. Rule 11(e)(1) is a bright-line rule prohibiting all forms of judicial participation before the parties have reached a plea agreement and disclosed the agreement in open court. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

The primary reason for Rule 11 is that a judge's participation in plea negotiation is inherently coercive. Rule 11 is designed to totally eliminate judicial pressure from the plea bargaining process. Judicial participation in plea negotiation discussions also threatens the trial judge's impartiality. Rule 11(e)(1)'s bar of judicial participation in the plea discussions also serves to preserve the judge's impartiality after the negotiations are completed. This is because judicial participation in a plea discussion makes it difficult for a judge to later objectively assess the voluntariness of the plea; risks the loss (if the plea negotiations fail) of the judge's impartiality during trial; and diminishes the judge's objectivity in post-trial matters such as sentencing and motions for acquittal. Rule 11(e)(1) also protects the integrity of the judicial process — so that the judge's impartiality and objectivity shall not be open to any questions or suspicions when it

becomes his duty to impose sentence. The judge's role must be that of a neutral arbiter of the criminal prosecution: his involvement in the adversary process of plea negotiation is beyond and detracts from that judicial duty. Kinere v. Kosrae, 14 FSM R. 375, 388 (App. 2006).

A defendant who has pled guilty after the judge has participated in plea discussions should be allowed to replead, without having to show actual prejudice has resulted from the participation. Regardless of whether he has shown actual prejudice, a defendant who has pleaded guilty after the judge has participated in plea discussions is entitled to replead. Judicial participation in plea discussions is not harmless error. This is because the court cannot measure the harm to the defendant because it cannot know what agreement, if any would have been reached absent judicial participation. Kinere v. Kosrae, 14 FSM R. 375, 388-89 (App. 2006).

When a case is remanded to permit the defendant to replead because the trial judge had participated in plea discussion in violation of Rule 11(e)(1), the case will be reassigned to another judge as a prophylactic measure. Kinere v. Kosrae, 14 FSM R. 375, 389 (App. 2006).

A plea of "nolo contendere" literally means "I do not contest it." Tulensru v. Kosrae, 15 FSM R. 122, 128 (App. 2007).

A bargained-for dismissal as part of a plea agreement is not tantamount to an acquittal and the dismissal of charges pursuant to a plea agreement is clearly not a finding of the same order as an acquittal and should not have the same implications. Therefore, an accused's bargained-for dismissal of an illegal possession of ammunition charge against him does not warrant the dismissal of the aiding and abetting illegal possession of ammunition charges against other defendants. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

In order to convict defendants of the aiding and abetting illegal possession of ammunition, the prosecution must first prove that another illegally possessed ammunition. But the dismissal of the illegal possession of ammunition charge against that other as the result of his bargained-for plea agreement in the other's case does not preclude the prosecution from proving, in this case, that the other illegally possessed ammunition, and then proving that the defendants aided and abetted him. FSM v. Sam, 15 FSM R. 457, 462 (Chk. 2007).

Rule 11 does not apply to hearings on the revocation of probation or supervised release. Rule 11 on its face applies only to the procedures a court must follow before accepting a plea of guilty or nolo contendere. The rule is addressed to the taking of a plea, not the imposition of sentence or the revocation of probation. FSM v. William, 16 FSM R. 4, 7-8 (Chk. 2008).

When Rule 11 applies, the failure to comply with the Rule 11 procedures would entitle the defendant to have his plea set aside and to have another hearing at which he may plead anew. FSM v. William, 16 FSM R. 4, 8 n.2 (Chk. 2008).

A guilty plea is itself a conviction, ending the controversy, but admissions of probation violations [unlike guilty pleas] do not end the controversy. The judge must still decide the more difficult issue whether the violations warrant revocation of probation. Thus, admissions of probation violations, unlike guilty pleas, do not automatically trigger sentencing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unlike in a criminal prosecution where it is constitutionally required, in a probation revocation the government does not have to prove beyond a reasonable doubt that the probation terms have been violated. The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A court is not required by the rules or by due process to warn a defendant that he would not be able to withdraw his admissions if the court did not follow the parties' recommendation about the length of probation to be revoked. Nor is a court required to allow him to withdraw his admission when the length of the probation revocation is not to his liking and a formal waiver of the defendant's rights or a Rule 11 style colloquy is also not required. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The revocation or modification of probation is not governed by Rule 11, but by Criminal Procedure Rule 32.1, which provides for a preliminary hearing and a final revocation hearing. A preliminary hearing is only held whenever a probationer is held in custody on the ground that the person has violated a condition of probation or supervised release. When the probationer is not in custody, the hearing is a final revocation hearing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unless waived by the person whose probation the government seeks to revoke, that person must be given 1) written notice of the alleged probation violation; 2) disclosure of the evidence supporting the charge; 3) an opportunity to appear and to present evidence; 4) the opportunity to question adverse witnesses; and 5) notice of the right to be represented by counsel. FSM v. William, 16 FSM R. 4, 10 (Chk. 2008).

A guilty plea is as an admission of all the elements of a formal criminal charge. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A guilty plea constitutes an admission to all of the facts averred in the information. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

A plea of no contest or nolo contendere, a plea in which an accused does not expressly admit guilt but consents to be punished as if guilty, is insufficient to satisfy the actually litigated requirement and thus cannot be used to apply collateral estoppel or issue preclusion in a later civil proceeding. FSM v. Muty, 19 FSM R. 453, 459 n.3 (Chk. 2014).

Although a guilty plea eliminates the need for a contested trial, the FSM Supreme Court cannot enter a judgment of conviction on the plea unless it determines that a factual basis exists for it. FSM v. Muty, 19 FSM R. 453, 459 (Chk. 2014).

The court is not bound by the terms of a plea agreement, and, at the plea hearing, it must inform the defendant of the charges, his rights, and the maximum possible sentence, and it must ask if the guilty plea had been entered into without coercion, threats of force or other promises. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

Under Rule 11(e), when a plea agreement contains sentencing recommendations, the court may impose a different sentence than that proposed by the government and the parties. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

– Pleas – Withdrawal

The defendant may withdraw from a plea agreement at any time prior to the court's action on every element on the agreement. Dores v. FSM, 3 FSM R. 155, 158 (App. 1987).

Ordinarily Rule 32(d) only permits a motion to withdraw a guilty plea prior to imposition of sentence. When the defendant has been sentenced and served his sentence fully, a motion under this rule should under most circumstances be denied. Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

After sentencing, the court, in its discretion, may set aside a judgment of conviction and thereafter permit a defendant to withdraw his guilty plea only upon a showing manifest injustice. The burden of proof of establishing "manifest injustice" sufficient to warrant setting aside a conviction lies with the defendant. In order to sustain his burden, the defendant must show that the conviction was obtained through fraud, imposition upon him, or misapprehension of his legal rights, and/or that he is not guilty of the crimes as charged. Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

While a person's assertion that, given his rehabilitation over time, and his good work in the community and on behalf of his municipality in the years since his conviction, it is a "manifest injustice" that his felony conviction prohibits him from serving in Congress, may be grounds for a pardon, it is not a valid ground for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d). Trust Territory v. Edgar, 11 FSM R. 303, 306 (Chk. S. Ct. Tr. 2002).

Grounds for setting aside a conviction and permitting withdrawal of a guilty plea under Rule 32(d) include, *inter alia*, the trial court's failure to comply with Rule 11; the trial court's failure to adduce a factual basis for the plea; and lack of assistance of counsel coupled with a failure to understand the direct consequences of a guilty plea as regards the sentence to be imposed. Trust Territory v. Edgar, 11 FSM R. 303, 306-07 (Chk. S. Ct. Tr. 2002).

A motion to withdraw a guilty or nolo contendere plea may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. Kosrae v. Kinere, 13 FSM R. 230, 234 (Kos. S. Ct. Tr. 2005).

Rule 32(d) establishes a two step process for the setting aside of the judgment after sentence and withdrawal of the defendant's plea. First, the court must find manifest injustice in the defendant's plea of guilty. Second, if the court finds manifest injustice, it may, in its discretion, set aside the judgment of conviction and permit the defendant to withdraw his plea. The burden of establishing "manifest injustice" sufficient to warrant setting aside a conviction lies with the defendant. In order to sustain his burden, the defendant must show that his conviction was obtained through fraud, imposition upon him, misunderstanding of his legal rights, and/or that the defendant is not guilty of the crimes as charged. Grounds granting a motion brought pursuant to Rule 32(d) include lack of assistance of counsel, coupled with a failure to understand the direct consequences of a guilty plea with regard to the sentence to be imposed. Kosrae v. Kinere, 13 FSM R. 230, 234 (Kos. S. Ct. Tr. 2005).

For a defendant's former counsel to testify regarding communications made during the course of the case at hearing on a motion to withdraw the defendant's plea, the defendant must be advised that if counsel is permitted to testify, the attorney-client privilege must be waived. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

When the defendant voluntarily terminated the Public Defender Office's services and chose to retain private counsel; when counsel talked to his potential client and reviewed the file before accepting the representation; when counsel met with the defendant on more than five occasions and on each occasion, in accordance with his established legal practice, advised the defendant that he can change counsel at any time, if he so desired; when counsel interviewed the defendant on the charges brought against him and each of the facts alleged in the Information and the defendant admitted that each of the charges and facts were true and that each of the sexual assault acts occurred as alleged; when counsel considered the possibility of double jeopardy with respect to the sexual assault charges, but concluded that the defendant's protection against double jeopardy had not been violated and that it was therefore not a defense; when, based upon this evaluation and analysis, and upon the defendant's admissions, counsel participated in settlement negotiations with the state and exchanged several plea offers before the final plea agreement was reached; when counsel presented and explained the proposed plea agreement to the defendant; when the defendant testified that he was not forced to sign the plea agreement and that he met with counsel, who explained the terms of the plea agreement to him, including the pleas of guilty and the recommended sentencing; and when this plea agreement was signed and accepted by the court in lieu of going to trial only

after the court had explained it in the defendant's native language and was assured that the defendant understood the plea agreement and the direct consequences of his guilty pleas, the defendant was aware of the charges, his pleas of guilty to specific counts, dismissal of specific counts and the length of the recommended sentencing and therefore cannot show that his conviction was obtained through imposition upon him or that he misunderstood his legal rights or the direct consequences of his guilty pleas with regard to the sentence to be imposed for each count. Kosrae v. Kinere, 13 FSM R. 230, 236-37 (Kos. S. Ct. Tr. 2005).

The Public Defender, based upon the information he had received during his prior representation of the defendant in the matter, should have refused to sign the plea agreement, indicating his approval if he believed that the agreement violated the defendant's constitutional protection against double jeopardy. It is disingenuous for defendant to now argue that private counsel provided ineffective assistance of counsel for failing to raise the defense of double jeopardy, when defendant's former counsel, also a public defender, agreed to and signed the plea agreement in the matter. Kosrae v. Kinere, 13 FSM R. 230, 237 (Kos. S. Ct. Tr. 2005).

Kosrae Criminal Procedure Rule 32(d) provides that a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. The burden of establishing manifest injustice lies with the defendant. To meet this burden, the defendant must show that his conviction was obtained through fraud, imposition upon him, or misapprehension of his legal rights, and/or that he is not guilty of the crimes charged. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

Ineffective assistance of counsel during plea negotiations may invalidate a guilty plea if counsel's deficient performance undermined the voluntary and intelligent nature of the defendant's decision to plead guilty. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To meet the second prong of the ineffective assistance of counsel analysis in the context of plea negotiations, an appellant must demonstrate a reasonable probability that, but for attorney error, he would have proceeded to trial. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

– Preliminary Hearing

The statute providing for preliminary hearings for criminal defendants, by its terms, does not apply to a defendant who was never arrested and who appeared before the court competent to try him. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

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).

A preliminary hearing for the government to make a probable cause showing or for the defendant to

challenge probable cause is not required either by the statute or by the Constitution when the defendant has not been arrested and has had no restraints placed on his liberty other than the condition that he appear for trial. FSM v. Wainit, 10 FSM R. 618, 622-23 (Chk. 2002).

A preliminary hearing is not a defendant's discovery tool. The preliminary hearing's purpose is to establish probable cause for detaining or requiring bail for an accused, not to create a discovery opportunity for the defendant (although some discovery may usually be a by-product of the hearing). The Criminal Procedure Rules provide other discovery methods for a defendant's use. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

A preliminary hearing is not a mini-trial. FSM v. Wainit, 10 FSM R. 618, 623 (Chk. 2002).

When the government filed an information with an accompanying affidavit, and the court, having concluded that probable cause existed that certain crimes occurred and that the accused committed those crimes, authorized the issuance of a summons commanding the accused to appear before the court for his initial appearance, the accused is not entitled to a preliminary examination. Because a prosecutor's assessment of probable cause is not sufficient alone to cause a restraint of liberty pending trial, a preliminary hearing is required if an accused is to be detained pending trial or if significant restraints are to be placed on his liberty, and, by its terms, the statute providing for preliminary hearings for criminal defendants does not apply to a defendant who was summoned to appear before the court competent to try him. FSM v. Tosy, 15 FSM R. 463, 465 (Chk. 2008).

Usually when a defendant challenges whether the supporting affidavit shows probable cause for a charged offense, the prosecution will call witnesses and possibly introduce exhibits in order to firmly establish probable cause for the offense charged since the prosecution has the burden to establish probable cause. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

In situations where an arrest is not made pursuant to an arrest warrant, the arrested individual is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused and normally the accused has the right to a probable cause hearing within twenty four hours or be released without condition. FSM v. Kimura, 19 FSM R. 617, 620 n.4 (Pon. 2014).

The right to a prompt probable cause hearing is constitutional requirement for any significant pretrial restraint of liberty but is only necessary if detention, bail, or condition for release is placed on the defendant. FSM v. Kimura, 19 FSM R. 617, 620 n.5 (Pon. 2014).

– Prisons and Prisoners

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

Except in grave emergencies, the Director of Public Safety or any other executive branch official responsible for the administration of the jail has no inherent or implied power to exercise his own discretion, or to carry out instructions from other nonjudicial officials, in determining whether to release from jail persons ordered to be confined there. Soares v. FSM, 4 FSM R. 78, 79-80 (App. 1989).

There is necessarily some limited power for a jailer to release prisoners in the case of a grave emergency to protect lives or property, but the emergency power is narrow, to be exercised only when there is no opportunity to contact the proper authorities. Soares v. FSM, 4 FSM R. 78, 81 (App. 1989).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

The serious illness of a prisoner's child does not constitute an emergency necessitating the defendant's release from prison, where the child will receive the treatment she requires whether the prisoner is released or not. FSM v. Engichy, 4 FSM R. 177, 180 (Truk 1989).

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

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

Deliberate indifference to an inmate's medical needs can amount to cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 199-200 (Pon. 1991).

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

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

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM R. 179, 212 (Pon. 1991).

A prisoner, incarcerated as the result of his conviction for a national crime, is in the national government's custody although incarcerated in a state jail. The state is merely acting as the national government's agent in keeping the prisoner in custody. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

When it appears that the Chief of Police has attended to a prisoner's medical needs with respect to food preparation and the medical recommendation for low salt and low fat foods, there has been no refusal by the state to provide to the prisoner's medical needs. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

The Chuuk Attorney General must make a bi-weekly report to the Chuuk State Supreme Court listing each defendant and witness who has been held in custody pending information, arraignment or trial for a period in excess of ten days. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, particularly intimate association, are necessarily impacted and limited during the period of imprisonment. Persons convicted of crimes and serving a sentence of imprisonment necessarily have their rights of privacy and intimate association lost or restricted as a consequence of their imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to be married at his family home. The prisoner's right to privacy and association are necessarily limited during his period of imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Since a prisoner's rights to marry, privacy and association are not violated by the jailer's restriction of the location of prisoner's wedding ceremony to the Kosrae state jail, there is no unlawful restraint of the prisoner's liberty, and thus, a petition for the writ of habeas corpus to be married at home will be denied. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Considering the state's geographic and social configuration, the customary importance of marriages in the state and its effects upon the family and community relationships in Kosrae, the customary location of wedding ceremonies in Kosrae and the absence of any held at the state jail, a request for a prisoner to be married outside of the jail may be granted, in part, upon fulfillment of conditions. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Confining a person in dangerously unsanitary conditions, which represents a broader government-wide policy of deliberate indifference to the person's dignity and well-being, is a failure to provide civilized treatment, in violation of detainees' due process protections, and renders the state liable under 11 F.S.M.C. 701(3). Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

The state has a duty to protect the persons it has confined from themselves and each other and violating a person's civil right to be free from excessive force while detained in a jail, is a violation of 11 F.S.M.C. 701(3). The state can violate that duty by failing to intervene and stop the prisoners' attacks on the arrestees. Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

When the decedent's civil right to be free from excessive force while a prisoner in Weno municipal jail was violated, this violation and the defendants' failure to monitor the plaintiff prisoner was the proximate cause of his wrongful death. The defendants' failure to monitor may also show a deliberate indifference to the prisoner's medical needs, which is also a violation of the FSM Civil Rights statute. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A prisoner has a civil right to be free of excessive force while in custody. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The municipality, chief, and jailer owed a prisoner a duty of care, had a duty to regularly observe his condition, breached that duty by failing to provide the required checks on his condition. These defendants are therefore liable under for the prisoner's death by neglect. The municipality, through its subsequent conduct, effectively ratified its agents' conduct. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

The Joint Law Enforcement Agreement provides that the state is responsible for the incarceration of prisoners convicted or charged with a national crime. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

National prisoners held in Chuuk jail will not be released outright from the state jail or ordered moved to some other facility that holds national prisoners when the FSM-Chuuk joint law enforcement agreement remains in effect. FSM v. Sias, 16 FSM R. 661, 663 (Chk. 2009).

To the extent that the prisoners are asserting that Chuuk has a right to be paid money by the national government because of their incarceration in Chuuk state jail, the prisoners are asserting, not their own rights, but the State of Chuuk's rights, which they cannot do because they lack standing to raise a non-party's rights. FSM v. Sias, 16 FSM R. 661, 664 (Chk. 2009).

When a prisoner was kept incarcerated in state jail after he has finished his maximum jail sentence and when state officials, after the matter was brought to their attention, showed deliberate indifference to his continued incarceration, the prisoner was subjected to cruel and unusual punishment in violation of the FSM Constitution. Kon v. Chuuk, 19 FSM R. 463, 465-66 (Chk. 2014).

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

When there was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders, but once the prisoner's release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

– Process

The right to a speedy public and impartial trial attaches either when an information or complaint has been filed with the court and service of that information or complaint has been effected upon the one named as the accused; or when an accused has been arrested by means of an arrest warrant or other process issued by a judicial officer. "Other process" includes summons, writ, warrant, mandate or other process issuing from or by the authority of the court to have the defendant named therein appear before it at the

appointed time. It does not refer to a warrantless arrest. Pohnpei v. Weilbacher, 5 FSM R. 431, 451-53 (Pon. S. Ct. Tr. 1992).

A bench warrant is a process issued by the court itself, or from the bench, for the attachment or arrest of a person. One accused of crime, not in custody or under bail, may be brought before the court, after information filed, by means of a bench warrant or a *capias*, for his arrest; and the state has the right to have as many *capias* issued as are necessary to accomplish its duty to try one accused. Chuuk v. Defang, 9 FSM R. 43, 44 (Chk. S. Ct. Tr. 1999).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Merely being resident in a foreign country does not necessarily mean the witness is unavailable, but when the travel expenses are burdensome or when the witness unwilling to return for trial testimony, a possibility that may be more likely when he is an adverse, or even hostile, witness, a foreign resident may be considered unavailable and a deposition warranted. FSM v. Wainit, 13 FSM R. 301, 305-06 (Chk. 2005).

The filing of an information or complaint is one point in time where the statute stops, or tolls, the limitations period from running. The other event that may commence a prosecution and thus toll the statute of limitations is when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. The limitations period is also tolled during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

A bench warrant is a process issued by the court itself, or from the bench, for the attachment or arrest of a person such as a non-appearing defendant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 n.3 (Pon. 2012).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

A prosecution for a misdemeanor must be commenced within two years after it is committed. A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The right to a speedy trial does not attach until the information, or other process is issued. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

"Process" is a summons or writ issued in order to bring a defendant into court. "Service" usually refers to the formal delivery of some other legal notice, such as a pleading or a motion or other documents. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

In a criminal case, "process" is the arrest warrant or the penal summons that issues to compel a person to answer for a crime. FSM v. Itimai, 20 FSM R. 232, 233 n.1 (Pon. 2015).

– Prosecutors

A prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. Nix v. Ehmes, 1 FSM R. 114, 125-26 (Pon. 1982).

A prosecutor has wide discretion in determining whether to prosecute. Nix v. Ehmes, 1 FSM R. 114, 126 (Pon. 1982).

The decision to initiate, continue, or terminate a particular criminal prosecution is, with limited exceptions, within the prosecutor's discretion. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law, but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM R. 8, 13 (Pon. 1985).

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Although the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is initiated in the FSM Supreme Court, the court also has responsibility for assuring that actions thereafter taken are in the public interest. Thus, criminal litigation can be dismissed only by obtaining leave of court. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, which include participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity from prosecution for their role as an administrative or investigative officers, which includes participation in and giving advice regarding the execution of a search warrant. Jano v. King, 5 FSM R. 388, 396 (Pon. 1992).

Prosecutors are absolutely immune from prosecution for their actions which are connected to their role in judicial proceedings, but do not enjoy absolute immunity from prosecution for their role as an administrative or investigative officer. Therefore prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Liwi v. Finn, 5 FSM R. 398, 401 (Pon. 1992).

Prosecuting attorneys have wide discretion in determining whether to prosecute, and a prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, such as vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

Absent evidence to the contrary, a decision to prosecute a particular person is presumed to be motivated solely by proper considerations. In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present clear evidence to the contrary. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

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).

The Office of the Attorney General should complete appropriate assignment of criminal matters to avoid conflicts of interest. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A criminal case will not be dismissed if the whole FSM Department of Justice must be disqualified from prosecuting since a special prosecutor can be appointed. FSM v. Wainit, 12 FSM R. 172, 176 (Chk. 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 prosecutor must communicate to his witnesses so that they appear at hearings when they are needed even if they are attorneys in the same office. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

Statements to the press generally will not disqualify a prosecutor, especially since there is no jury pool to taint through pretrial publicity as there are no jury trials in the FSM. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 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).

Prosecutors' seeking a change of venue do not necessarily indicate bias so that they could continue to prosecute when the case is ready for immediate trial and, under the then alleged prevailing conditions, any FSM prosecutor might have felt unsafe unless venue were changed. FSM v. Wainit, 12 FSM R. 172, 177 (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 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).

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. 172, 178 (Chk. 2003).

Prosecutors' discretion is limited. They can neither withdraw from representing the plaintiff government, nor dismiss the case, without first seeking and obtaining leave of court. They can, of course, seek such leave. Their other remaining discretion lies in a possible plea bargain should the defendant seek one and in their sentencing recommendation should he be convicted. They also retain discretion in choice of trial tactics to employ. 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).

A prosecutor that has no interest in the case's outcome other than that justice be done has the exact interest that an impartial prosecutor must have because government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM R. 172, 180 (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).

It is the prosecutor's discretion to initiate, continue, or terminate a particular criminal prosecution. However, once prosecution has been initiated, the court also has responsibility to assure that all actions taken thereafter are in the public interest. Public interest requires the court to examine the grounds for a dismissal request. Kosrae v. Tosie, 12 FSM R. 296, 298 (Kos. S. Ct. Tr. 2004).

Generally, a motion to disqualify a prosecutor must be made at the earliest possible time, and failure to do so may constitute a waiver of the objection. FSM v. Wainit, 12 FSM R. 360, 363 (Chk. 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 there is no way to determine if prosecutors who were not disqualified would have exercised their discretion to file these charges, the information must be dismissed to allow that to happen. This is because no matter how firmly and conscientiously a prosecutor may steel himself against the intrusion of a competing and disqualifying interest, he never can be certain that he has succeeded in isolating himself from the inroads on his subconscious. The defendant does not have to show actual prejudice, because on the basis of public policy, it will be presumed to exist as a matter of law. The purpose of this is to avoid the appearance of impropriety. This is designed not only to prevent the dishonest practitioner from improper conduct but also to preclude the honest practitioner from being put in a position where he will be forced to choose between conflicting duties. FSM v. Wainit, 12 FSM R. 360, 364 (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).

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 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. FSM v. Wainit, 12 FSM R. 376, 381 (Chk. 2004).

As a general rule, an entire office of prosecutors will not be disqualified when one member is disqualified unless that one member has supervisory or administrative control over all the others. This general principle has been followed even when the entire prosecutor's office might be said to be a victim of the defendants' crimes. FSM v. Wainit, 12 FSM R. 376, 382 (Chk. 2004).

In light of the social and geographical configuration of Micronesia, FSM Const. art. XI, § 11, and the principle that a prosecutor's disqualification is largely within the court's discretion, the better course is to follow the general principle and disqualify only those in the office over whom the disqualified attorneys had, or have, supervisory authority, not the entire office. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

Police are considered part of the prosecution. FSM v. Walter, 13 FSM R. 264, 268 n.2 (Chk. 2005).

When the prosecutor's filing of a contempt charge against only the defense counsel followed precipitously on the heels of the defense counsel's clients' non-filing of a required report; when the non-complying clients were not charged with contempt; when the prosecutor sought an enlargement of time to respond to already filed motions, for which the rules required a response within ten days, in order to

prepare and file a criminal contempt charge although there was no need to prepare the charge in such an immediate fashion since contempt has a three-month statute of limitations; when it would have been salutary for the prosecutor to have taken some time for calm reflection and consideration and some research before deciding whether to exercise prosecutor's discretion to file contempt charges and against whom; when the haste with which the contempt charge was brought against defense counsel does not show the impartial exercise of a prosecutor's discretion of whether to initiate a prosecution, that is required of the prosecutor's office; when, once the prosecutor became aware of the need to prove defense counsel's bad faith, he did not move to amend the contempt charge to allege bad faith but months later moved to dismiss the information against defense counsel on other grounds, the court thus concludes that the contempt prosecution was not brought in good faith although the court does not conclude that the contempt prosecution was initiated to intentionally interfere with the defendants' chosen counsel, but rather that it appeared that it may have had that effect. FSM v. Kansou, 13 FSM R. 344, 349-50 (Chk. 2005).

A prosecutor is held to a higher standard than defense counsel. A prosecutor is much more constrained as an advocate and has the responsibility of a minister of justice and not simply that of an advocate. FSM v. Kansou, 13 FSM R. 344, 349-50 (Chk. 2005).

A prosecutor must have no interest in the case's outcome other than that justice be done because the government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Kansou, 13 FSM R. 344, 350 (Chk. 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).

The record is wholly inadequate to disqualify the entire FSM Department of Justice or any other member of that department when the record shows that one prosecutor must be disqualified from prosecuting some of the 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).

Under FSM caselaw, prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, including participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity for their role as administrative or investigative officers. Prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

A request for, appearance at, and the presentation of evidence related to obtaining a search warrant is considered part of a prosecutor's judicial function, for which the prosecutor enjoys absolute immunity. This is true even though no criminal information has been filed yet since search warrants are usually, but not always, sought before criminal charges are filed. The defendants therefore enjoy absolute immunity for all alleged wrongful acts related to obtaining search warrants or other pretrial orders of a similar nature. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A prosecutor's actions in seeking (and obtaining) release conditions during an initial appearance in a criminal case, was a judicial function for which prosecutors enjoy absolute prosecutorial immunity. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A motion to disqualify the Attorney General's Office is a preliminary motion, which ought to be brought fairly early in the proceedings. Its filing should not wait until the deadline for filing all other pretrial motions. FSM v. Wainit, 13 FSM R. 433, 438 (Chk. 2005).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court is required to make decisions consistent with the FSM's social and geographical configuration. While the FSM is a country of large geographical distances, it has a small land base, a small population, and limited resources. Likewise, it has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. 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. Wainit, 13 FSM R. 433, 440 (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).

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).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 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).

A prosecutor is held to a higher standard than defense counsel. A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. A prosecutor must have no interest in the case's outcome other than that justice be done since the government's interest in a criminal case is not that it should win the case, but that justice be done. FSM v. Kansou, 14 FSM R. 171, 175 (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).

Prosecutors, because of their conduct, can be disqualified when it is in the public's interest that the judicial process should both appear fair and be fair in fact. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

In helping locate and discuss relevant evidence in the discovery, a former prosecutor was a part of the prosecution team in the same way that the police are considered part of the prosecution team. FSM v. Kansou, 14 FSM R. 273, 277 (Chk. 2006).

Once an assistant attorney general has been disqualified, that attorney's 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. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

The court must make its decisions 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. It also has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

To insure that the judicial process both appears fair and is fair in fact, the court, aware of the hardship and insurmountable difficulties that the continued disqualification of the entire FSM Department of Justice may cause and also aware that the judicial process's fairness may be impugned by the appearance that a former disqualified prosecutor may have had some involvement in the government's preparation of its case against those defendants he was barred from prosecuting, will order that the entire FSM Department of Justice remain disqualified from prosecuting those defendants except for any FSM Department of Justice attorneys hired after the date of the former prosecutor's last involvement. The new assistant attorney(s) general assigned to prosecute the case shall not have discussed the case's merits with the previous prosecutors and shall not consult any of the previous prosecutors in preparing their prosecution. These

new prosecutors shall be screened from all previous prosecutors in the case. FSM v. Kansou, 14 FSM R. 273, 278-79 (Chk. 2006).

A prosecutor has wide discretion in determining who and whether to prosecute, and a prosecutor's decision whether to prosecute must be overruled only in the most extraordinary circumstances, e.g., vindictiveness, impermissible discrimination, or an attempt to prevent the exercise of constitutional rights. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When a former prosecutor was not disqualified from prosecuting the movant, any communication between the former prosecutor, who for the purpose of the motion must be considered as a part of the prosecution team since he was acting as a consultant attorney, and the Department of Justice concerning the movant cannot be per se misconduct. FSM v. Kansou, 15 FSM R. 373, 376-77 (Chk. 2007).

A former prosecutor who is helping locate and discuss relevant evidence in the discovery, is considered a part of the prosecution team. FSM v. Kansou, 15 FSM R. 373, 377 n.1 (Chk. 2007).

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).

Prosecutors are constitutionally required to provide criminal defendants with any and all exculpatory evidence they have regardless of whether the defendant has made a discovery request. This is a continuing obligation which does not cease at any deadline. FSM v. Kool, 18 FSM R. 291, 293-94 (Chk. 2012).

A prosecutor has an ethical obligation to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Regardless of whether an accused has requested discovery, a prosecutor must disclose to the defense evidence that is favorable to the accused, either because it is exculpatory or because it is impeaching. FSM v. Kool, 18 FSM R. 291, 294 (Chk. 2012).

Police are considered part of the prosecution team so that any evidence or information in the hands of the police is considered evidence or information in the prosecution's hands. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

– Public Trial

The FSM constitutional right that the defendant in a criminal case has a right to a speedy public trial is traceable to the U.S. Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A sentence is imposed when it is pronounced in open court. This is a constitutional as well as procedural requirement. The rules require the defendant's presence at sentencing. This is also required by the FSM constitutional provision, requiring a public trial and giving a defendant the right to confront witness against him. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

The FSM Constitution guarantees every criminal defendant the right to a public trial, as does the Kosrae Constitution. A criminal defendant's right to be present at trial extends to all stages of trial, including the return of the finding or verdict, even in a bench trial. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The defendant shall be present at every stage of the trial including the finding of the court, and the

judge's finding must be returned in open court. Nena v. Kosrae, 14 FSM R. 73, 78 (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).

The announcement of the decision to convict or acquit is neither of little significance nor trivial; it is the focal point of the entire trial. To exclude the public, the defendant, the prosecution, and defense counsel from such a proceeding—indeed not to have a proceeding at all—affects the integrity and legitimacy of the entire judicial process. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The remedy for the constitutional violation of not pronouncing a defendant guilty or acquitted in open court is not a new trial on the merits — instead the finding (and conviction) is vacated and the case is returned to the trial court for it to make a public pronouncement of its decision. Since a pronouncement in open court is constitutionally required, no other remedy is adequate. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

The trial court must, in all criminal trials, orally pronounce in open court its finding of guilty or not guilty on each count tried. The trial court may issue written findings at the conclusion of the oral proceeding in open court if it so chooses or if a party has requested special findings and they are lengthy. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

The FSM and Kosrae Constitutions guarantee every criminal defendant the right to a public trial. A criminal defendant's right to be present at trial extends to all stages of trial, including the return of the finding or verdict of guilty or not guilty. 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).

Even if the finding of guilt had been made in open court with the defendant present, the case would still have to be remanded to the trial court when there was no public imposition of sentence with the defendant present. When a sentence is imposed, the defendant's presence is required because the defendant must be present at every stage of the trial including the finding of the court and at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

The defendant's right (found in Rule 43) to be present at the imposition of sentence is constitutionally based on the confrontation and due process clauses. Neth v. Kosrae, 14 FSM R. 228, 233 & n.3 (App. 2006).

Although Kosrae Criminal Rule 43(b) permits a criminal defendant, once trial has started with the defendant present, to voluntarily absent himself or herself from the trial or from the oral pronouncement of findings, it does not permit a criminal defendant to be absent from the court's imposition of sentence or to waive his or her right to be present at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

A reason illustrating the importance of the public imposition of sentence is that the written sentence

must conform to the one delivered orally. If it does not, the oral sentence, not the written sentence, controls. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

The sentence orally pronounced from the bench is the sentence, because the only sentence that is legally cognizable is the actual oral pronouncement in the defendant's presence. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

The general public also has a right and interest in a public sentencing that enables the public to learn the sentence and court's reasons for it. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

Criminal Procedure Rules 43(b) only applies when a criminal defendant has appeared for trial and trial has started and then the defendant voluntarily absents himself or herself although the defendant has been informed of the obligation to remain during trial. In such cases, the defendant is considered to have waived the right to be present and the trial may progress to a conclusion in his or her absence. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

Rule 43(c)(3) provides that defendant is not required to be present at a conference or argument upon a question of law. But an evidentiary hearing is one that involves more than just a question of law. It involves findings of fact. An evidentiary hearing is thus one where the defendant must appear in court. FSM v. Jacob, 15 FSM R. 439, 442 (Chk. 2007).

A criminal contempt conviction would have to be vacated when neither the trial court's contempt finding nor its sentencing were done in open court because a criminal defendant's constitutional right to a public trial requires that the finding of guilt or innocence be made in open court and that, if there is a guilty finding, then the sentence must also be imposed in open court. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

Since the criminal contempt statute provides that no punishment of a fine of more than \$100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a \$200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

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).

– Right to Compel Witnesses

Upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the witness's presence is necessary to an adequate defense, the government will bear the costs of insuring that the witness is present at trial. Specifically, this includes travel costs. FSM v. Wainit, 11 FSM R. 511, 512 (Pon. 2003).

In a criminal case, a witness's fees and costs need not be tendered at the time of service of the subpoena, a useful precautionary measure. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

If a criminal defendant elects to proceed under FSM Criminal Rule 17(b), he should then ascertain from the FSM what that manner of payment is, and how that procedure will work in the event that he is found unable to pay the costs attendant upon securing the presence of his witnesses at trial. FSM v. Wainit, 11 FSM R. 511, 513 (Pon. 2003).

– Right to Confront Witnesses

A codefendant's inculpatory statement which has been admitted into evidence may not be used

against any defendant other than the declarant without violating the right of confrontation guarantee of the FSM Constitution. Hartman v. FSM, 5 FSM R. 224, 229 (App. 1991).

Use of a defendant's out of court statement as evidence against a codefendant would violate the codefendant's "right of confrontation" since the declarant is not a witness at the trial subject to cross examination. Hartman v. FSM, 6 FSM R. 293, 301 (App. 1993).

Criminal conviction of a defendant who has failed to appear for trial violates the accused's constitutional right to confront witnesses against him, and other rights, such as due process and effective assistance of counsel, may also be implicated. But a defendant who appears at the beginning of trial and voluntarily absents himself before the trial's end waives any further right to be present. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 & n.7 (App. 1996).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM R. 618, 621 n.1 (Chk. 2002).

The right to confrontation is basically a trial right. It includes both the opportunity to cross-examine and the occasion for the factfinder to weigh the demeanor of the witness, and it applies when the ability to confront witnesses is most important—when the trier-of-fact determines the ultimate issue of fact. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The right to confrontation does not apply before a criminal defendant is accused, and it is doubtful that the right applies even at a pretrial hearing. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The use of affidavits to support the filing of a criminal information does not violate a criminal defendant's right to confrontation. The defendant will have the opportunity to confront the affiants if they are called as witnesses at trial by either the government or the defendant. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

An accused has a constitutional right to be confronted with the witnesses against him. Both the Constitution and the criminal rules contemplate trial by live testimony, not by deposition. This is in part because of the desirability of having the factfinder observe the witnesses' demeanor. Exceptional circumstances are thus required for depositions in criminal cases. FSM v. Wainit, 13 FSM R. 301, 304 (Chk. 2005).

Our constitution provides a criminal defendant with the right to be confronted by his accusers, which means that a defendant may cross-examine the witness against him. Consequently, the court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculcates another defendant since a statement cannot be cross-examined. FSM v. Sam, 14 FSM R. 328, 335 (Chk. 2006).

If codefendants are tried together, a defendant's out-of-court statement ought to be redacted to eliminate references to other codefendants. Failure to do so may result in reversal of convictions in the interests of justice. After redaction, no prejudice will occur if the statements then give no reference to any codefendant. Redaction can normally be accomplished by the parties. Thus the court will not view the statement until after redaction. FSM v. Sam, 14 FSM R. 398, 400 (Chk. 2006).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. The right to confrontation is basically a trial right. It includes both the opportunity to cross-examine and the

occasion for the factfinder to weigh the witness's demeanor. It applies when the ability to confront witnesses is most important – when the trier-of-fact determines the ultimate issue of fact. FSM v. Sam, 14 FSM R. 398, 401 (Chk. 2006).

The court is forbidden to consider as evidence against a defendant any part of a non-testifying codefendant's statement which inculcates another defendant since a statement cannot be cross-examined. Chuuk v. Suzuki, 16 FSM R. 625, 631 (Chk. S. Ct. Tr. 2009).

Since the accused has a constitutional right to confront and cross examine his accusers at trial, if the complainant has been untruthful or misleading, it remains to be ferreted out through the adversarial process. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When codefendants are tried together, one defendant's admissible out-of-court statement ought to be redacted to eliminate references to the codefendant. This is because the use of a defendant's statement as evidence against a codefendant would violate the codefendant's right to be confronted with the witnesses against him if the declarant is not a witness at the trial subject to cross examination. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Redaction is not required for a defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Sorim, 17 FSM R. 515, 524 n.2 (Chk. 2011).

Although it may not be known whether a codefendant will testify at trial, the prosecution ought to be prepared in advance for the eventuality that she will not and be ready with a redacted version of any statement by her that it intends to introduce as evidence at trial. If she does testify, the prosecution may then introduce the unredacted statement even if it has already introduced a redacted version. FSM v. Sorim, 17 FSM R. 515, 525 (Chk. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

As a general principle, an accused in a criminal trial must be able to confront the witnesses against him, but the court will not issue a blanket ruling with unknown effects about statements that the prosecution may or may not seek to introduce at trial. The accused may raise his objections to any statement once it is known that the prosecution intends to introduce it. FSM v. Sorim, 17 FSM R. 515, 525 (Chk. 2011).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights at Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The prosecution may use Rule 15 to depose its witnesses because the FSM's Confrontation Clause does not always require a physical confrontation before the fact-finder, but the justification for using a deposition at a criminal trial as evidence against a defendant is much stronger if defendant has been present or if he or she has waived the right to be present. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

The FSM's confrontation clause does not always require a physical confrontation before the fact-finder. For example, there are certain well-established exceptions to the rule barring hearsay that, because of their indicia of reliability or trustworthiness, allow the introduction of evidence from witnesses a defendant will be unable to confront. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

When the government conducts a Rule 15 deposition in a foreign land with a view toward introducing it at trial, the Confrontation Clause requires, at a minimum, that the government undertake diligent efforts to secure the defendant's presence. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

A defendant's failure, absent good cause shown, to appear at the deposition of a government witness after notice and the government's tender of expenses constitutes a waiver of that right and of any objection to the taking and use of the deposition based upon that right. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

The use of a defendant's inculpatory statements in evidence against a co-defendant, would violate the right of confrontation since the declarant is not a witness at the trial subject to cross examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

An accused's right to confront the witnesses against him provides him with two types of protection: the right physically to face those who testify against him, and the right to conduct cross-examination. FSM v. Ezra, 19 FSM R. 497, 518 (Pon. 2014).

The FSM Rules of Criminal Procedure are silent about the admissibility of Skype testimony at trial and Congress has not legislated on this issue. Therefore it is left to the court's sound discretion to determine whether to allow Skype testimony at trial as FSM Criminal Rule 26 does not act to preclude the admissibility of Skype testimony because testimony offered via Skype would be taken orally in open court as the Rule requires. FSM v. Halbert, 20 FSM R. 42, 45 & n.1 (Pon. 2015).

Since live televised testimony is certainly not the equivalent of in-person testimony, the decision to excuse a witness's presence in the courtroom should be weighed carefully. FSM v. Halbert, 20 FSM R. 42, 45-46 (Pon. 2015).

Allowing testimony over Skype in exceptional circumstances is essential to vindicate the policy expressed in FSM Criminal Rule 2, which requires that the Rules be construed to provide "fairness in administration and the elimination of unjustifiable expense and delay" in criminal proceedings. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

When, in light of the witness's refusal to travel to the FSM, the court is faced with three flawed options: 1) The witness's testimony could be excluded entirely; 2) trial could be continued to allow the parties to travel to the United States to depose the witness; and 3) the witness could testify over Skype, the court may exercise its discretion to allow the witness to testify over Skype when his testimony is necessary to further the important public policy in favor of justly resolving criminal cases. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

The confrontation clause requires the defendant to cross examine the adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness' credibility. However, the right to confrontation is not an absolute right. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

The FSM Declaration of Rights was modeled after the U.S. Bill of Rights, and so the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights in Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Halbert, 20 FSM R. 42, 46 n.3 (Pon. 2015).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the

giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

Confrontation rights may be satisfied absent a physical, face-to-face confrontation at trial only when there is an individualized determination that denial of physical face-to-face confrontation is necessary to further an important public policy, and only when the testimony's reliability is otherwise assured. Since the reliability of Skype testimony is safeguarded by the traditional indicia of reliability, the deciding question is whether, under the circumstances of this case, allowing a witness to testify via Skype is necessary to further an important public policy. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

In all cases that allowed televised testimony it was not practicable for a material witness to appear at trial so as to facilitate physical face-to-face confrontation. Similar circumstances are extant when a material witness for the government is unable to secure permission from his employer to travel to the FSM and the court is powerless to compel his presence via a subpoena. In such circumstances, and where the reliability of testimony is otherwise ensured, allowing a witness to testify via Skype does not violate the defendant's right under the FSM Constitution to confront witnesses against him. FSM v. Halbert, 20 FSM R. 42, 47-48 (Pon. 2015).

A two-way video platform, such as Skype, preserves the face-to-face confrontation that is at the center of the right to confrontation, and thus, a more profitable comparison can be made to the Rule 15 deposition, which may be employed whenever due to the exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial." FSM v. Halbert, 20 FSM R. 42, 48 (Pon. 2015).

Since the FSM Constitution requires that court decisions be consistent with the social and geographical configuration of Micronesia; since the geographical configuration of Micronesia is such that its population is scattered amongst numerous islands, and transportation between the distant islands of the FSM can be expensive, time consuming and unreliable, and since travel to and from the United States can be especially expensive and time consuming due to the vast distances involved and one commercial airline carrier's monopoly over transportation in the FSM, the FSM's unique geographical configuration generates a public policy impetus in favor of remote testimony by Skype that is lacking in the United States. FSM v. Halbert, 20 FSM R. 42, 48-49 (Pon. 2015).

– Right to Counsel

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, the right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM R. 225, 260 (Pon. 1983).

Where the defendants had been advised of their right to counsel but there was no indication that they desired or requested counsel, there is no basis for finding that their right to counsel had been violated. FSM v. Jonathan, 2 FSM R. 189, 199 (Kos. 1986).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his right, violates 12 F.S.M.C. 218. FSM v. Edward, 3 FSM R. 224, 235 (Pon. 1987).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

Although implied waivers of a defendant's rights might be valid there is a presumption against a finding of a waiver of rights. Moses v. FSM, 5 FSM R. 156, 159-60 (App. 1991).

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).

A defendant in a criminal case has a right to have counsel for his defense. This constitutional right to counsel affords a criminal defendant the right to choose his own counsel, provided that the choice of counsel does not interfere with just resolution of the case. Kosrae v. Sigrah, 11 FSM R. 26, 29 (Kos. S. Ct. Tr. 2002).

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).

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).

All criminal defendants, including corporations, have the right to effective assistance of counsel. FSM v. Kansou, 13 FSM R. 392, 394 (Chk. 2005).

The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. FSM v. Kansou, 13 FSM R. 392, 394 & n.1 (Chk.

2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

For appointment of counsel under Rule 44(a), the rule requires that a defendant be unable to obtain counsel. Before the court can make a determination that a business entity defendant is unable to obtain counsel, the court would need detailed evidence concerning each entity defendant's financial situation, its ability to pay counsel, whether it has sought to obtain counsel, which counsel it had tried to retain, and what was the result of each of those attempts. Without that information, the court has no ground on which to conclude that the entity defendants, or any one of them, are unable to obtain counsel, or that they have even tried to. When none of that information is before the court, the court, without deciding whether Rule 44(a) applies to defendants who are not natural persons, will decline to appoint counsel for the entity defendants under Rule 44(a). FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Kansou, 14 FSM R. 150, 151 (Chk. 2006).

The burden of proof is on the prosecution to show that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. The standard of proof the prosecution must meet is the preponderance of the evidence. FSM v. Kansou, 14 FSM R. 150, 151-52 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The government's drafting of the defendant's affidavit, which the defendant signed and had notarized at the FSM Supreme Court, Palikir, Pohnpei, while not in the presence of any prosecution team member, does not make that affidavit the product of an unknowing or involuntary waiver of the defendant's rights. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

A defendant's right to counsel extends through any appeal of the trial court decision. It is counsel's responsibility, in consultation with his client, to determine where his obligations and duties lie and to determine whether an appeal is a desirable course of action, and proceed accordingly. Chuuk v. William, 16 FSM R. 149, 151 (Chk. S. Ct. Tr. 2008).

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).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

Upon request, the police must allow the arrested person to call an attorney. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

An arrestee was not denied access to legal counsel when she was allowed several attempts to call an attorney, but the attorneys that she attempted to contact via telephone were not available at that time. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

For a defendant to waive his right to silence or to counsel, he must do so knowingly and intelligently. The burden is on the government to show not only that the waiver was knowingly and intelligently given, but that it was given before any statement was made. There exists a presumption against such waivers. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When an accused asked for counsel before he gave his statement, the government failed to overcome the presumption against the accused's waiver of his right to counsel and to remain silent. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

When a defendant has expressed a wish to meet with counsel before further questioning, questioning must cease at once. Any attempt by police officers to ignore or override the defendant's wish, or to dissuade him from exercising his constitutional rights, is grounds for suppression of his subsequent statement. Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009).

Since the criminal contempt statute provides that no punishment of a fine of more than \$100 or imprisonment can be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, and to have the assistance of counsel, this statute was violated when a \$200 fine was imposed without a public trial and the party having the opportunity to be represented by a public defender. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

An arrestee's right to be informed of her right to counsel when arrested is a due process right. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

The usual remedy for the denial of the right to counsel is to vacate the conviction and remand for a new trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 n.2 (Pon. 2012).

Since, in a criminal case, a court is not constitutionally required to allow defense counsel to withdraw or to be replaced at a strategic moment in the proceedings, the right to counsel of an official who wanted to switch trial counsel before the end of his impeachment trial has not been violated even if that official had a constitutional right to counsel during his impeachment trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

The FSM Constitution protects the due process rights of all people accused of a crime. These rights include the right to be informed, the right against self-incrimination, and the right to have an attorney present at the time of questioning. These rights, along with others, were codified under 12 F.S.M.C. 214 and 218. The remedy for unlawful violations of these due process rights shall not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

When the defendants have been advised of their right to counsel but there was no indication that they desired or requested counsel, there is no basis for finding that their right to counsel has been violated. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

– Right to Counsel – Ineffective Assistance

Where defendant's counsel had five days to prepare for the defense of the accused, and was granted a two day continuance, in the absence of any showing in the record or representation by counsel of resulting prejudice or ineffectiveness of counsel, the trial court's refusal to grant a longer continuance was not an abuse of discretion and did not violate article IV, section 6 of the FSM Constitution. Hartman v. FSM, 5 FSM R. 224, 233-34 (App. 1991).

The right of effective assistance of counsel applies equally to retained as well as appointed counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Criminal defendants charged with a serious crime have a constitutional right to effective assistance of counsel even if the defendant is a corporation with retained counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Defense counsel's performance must be both deficient and prejudicial to the defendant to be ineffective assistance. Under the first prong of the test, the proper standard for attorney performance is that of reasonably effective assistance, and under the second prong, an error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment, but in certain contexts prejudice is presumed. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 478 (App. 1996).

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

In order to prevail on an ineffective assistance of counsel claim in cases of joint representation, a criminal defendant who raised no objection at trial to the joint representation must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

A criminal defendant who cannot show joint representation of conflicting interests can still prevail on an ineffective assistance claim if he can show deficient attorney performance resulting in actual prejudice. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

To resolve an ineffective assistance of counsel claim a court must consider the entire record. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

While an evidentiary hearing on remand may be necessary in many, or even most, ineffective assistance of counsel cases, it may not be needed when counsel's performance was deficient, and an actual conflict of interest existed which adversely affected that performance. In some such cases the

conviction may be reversed, and the government may proceed with a new trial. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

The right to counsel means competent counsel, but a trial counselor is not, merely because he is a trial counselor and not a lawyer, incompetent counsel. Representation by a trial counselor is not per se ineffective assistance of counsel failing to meet the constitutional requirement. Nelson v. Kosrae, 8 FSM R. 397, 400 (App. 1998).

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).

The Public Defender, based upon the information he had received during his prior representation of the defendant in the matter, should have refused to sign the plea agreement, indicating his approval if he believed that the agreement violated the defendant's constitutional protection against double jeopardy. It is disingenuous for defendant to now argue that private counsel provided ineffective assistance of counsel for failing to raise the defense of double jeopardy, when defendant's former counsel, also a public defender, agreed to and signed the plea agreement in the matter. Kosrae v. Kinere, 13 FSM R. 230, 237 (Kos. S. Ct. Tr. 2005).

Ineffective assistance of counsel during plea negotiations may invalidate a guilty plea if counsel's deficient performance undermined the voluntary and intelligent nature of the defendant's decision to plead guilty. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To prevail on an ineffective assistance of counsel claim, an appellant must show that 1) counsel's performance was so deficient that it fell below an objective standard of reasonableness, and 2) the deficient performance prejudiced the defense. Under the first prong of the analysis, courts must indulge in a strong presumption of attorney competence. The second prong of the analysis requires an appellant to demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different (i.e., better). If the appellant cannot satisfy the first prong of this test, the court's inquiry will proceed no further. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To meet the second prong of the ineffective assistance of counsel analysis in the context of plea negotiations, an appellant must demonstrate a reasonable probability that, but for attorney error, he would have proceeded to trial. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

To resolve an argument that the defendant's counsel was constitutionally ineffective for failing to raise a double jeopardy defense before the defendant entered his guilty pleas, the court must necessarily consider the merits of the defendant's double jeopardy claim, since counsel may not be declared constitutionally ineffective for failing to raise a defense that would not have benefited the client. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

It is axiomatic that the failure to raise nonmeritorious issues does not constitute ineffective assistance of counsel. A position that as long as a defendant has a defense that has historically been recognized as meritorious, he automatically prevails on his ineffectiveness claim without having to prove that the defense would have been meritorious in his case is clearly flawed reasoning. Kinere v. Kosrae, 14 FSM R. 375, 382 & n.2 (App. 2006).

Having concluded that counsel was not constitutionally ineffective for failing to raise the defense of double jeopardy, the court must conclude that it is irrelevant whether counsel would have raised the defense if he had pondered the case longer. Kinere v. Kosrae, 14 FSM R. 375, 386 (App. 2006).

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

In order to prevail on an ineffective assistance of counsel claim in cases of joint representation, a criminal defendant who raised no objection at trial to the joint representation must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

A criminal defendant who cannot show joint representation of conflicting interests can still prevail on an ineffective assistance claim if he can show deficient attorney performance resulting in actual prejudice. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479 (App. 1996).

It is an uncommon case where joint representation of criminal defendants is proper because the potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to represent more than one codefendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 479-80 (App. 1996).

Conflicting interests in the joint representation of criminal defendants might be discovered and avoided if an early hearing is conducted pursuant to FSM Criminal Rule 44(c). Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 480 n.9 (App. 1996).

In a case of actual conflict between jointly represented criminal codefendants a presumption of prejudice exists so that actual prejudice does not have to be shown and so that a harmless error inquiry is inappropriate. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 480 (App. 1996).

There must first be a finding of a valid waiver to any conflict of interest from the jointly represented codefendants before the question of whether counsel's trial tactics were reasoned becomes proper. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

A court must indulge in every reasonable presumption against the waiver of the conflict of an attorney jointly representing codefendants. Such a waiver is not to be lightly inferred—it must be shown to have been knowingly, voluntarily and intelligently made. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

Reversal of a conviction is warranted where there has been no inquiry into waiver of any conflict of counsel jointly representing codefendants, no hint of a waiver appears on the record, and an actual conflict existed. A new trial is then proper. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 483 (App. 1996).

The right to waive an attorney's conflict of interest is not absolute. There are times when a court should not allow an otherwise valid waiver by a jointly represented codefendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

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).

It is an uncommon case where joint representation of criminal defendants is proper since the potential for conflict of interest in representing multiple criminal defendants is so grave that ordinarily a lawyer should decline to represent more than one codefendant. Nena v. Kosrae, 14 FSM R. 73, 79 (App. 2006).

Because prejudice is presumed when counsel is burdened by an actual conflict of interest an attorney representing criminal codefendants with conflicting interests denies a defendant his constitutional right to effective assistance of counsel. 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).

A danger of representing criminal codefendants is that in any case with codefendants, one (or more) codefendant may insist upon his right to testify even if counsel advises against it since a criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. When one codefendant testifies and another codefendant is represented by the same counsel, the other codefendant is deprived of effective assistance of counsel because he is unable to cross-examine the testifying defendant. Nena v. Kosrae, 14 FSM R. 73, 80 (App. 2006).

Even if codefendants' testimony would be entirely consistent, defendants jointly tried may present a conflict because of the advantages and disadvantages of taking the stand may vary substantially as between them. A decision to have them testify or not testify might work to the disadvantage of one or the other, while a decision to have only one testify will undoubtedly highlight the lack of testimony from the other. Although these tensions between the codefendants' interests may be lessened somewhat by separate trials, multiple representation may present various conflicts even in that setting. Nena v. Kosrae, 14 FSM R. 73, 80 (App. 2006).

When a conflict between two codefendants may not have been obvious initially, but once one of the defendants testified, it was apparent and it turned out to be prejudicial, although it was entirely likely that if the defendants had been tried separately or if neither defendant had testified there would have been no conflict, the remedy for a defendant who had ineffective assistance of counsel is to reverse the conviction and remand for a new trial. Reversal of a conviction is warranted when there has been no inquiry into waiver of any conflict of counsel jointly representing codefendants, no hint of a waiver appears on the record, and an actual conflict existed. A new trial is then proper. Nena v. Kosrae, 14 FSM R. 73, 81 & n.4 (App. 2006).

When the court raised the issue of a potential conflict of interest in having one attorney representing both defendants. After a brief discussion, the defendants expressly waived the right to separate counsel in court. The court agrees that at this time that no conflict of interest is apparent, however, recognizes that a Rule 44 hearing might be necessary at a later date. FSM v. Kimura, 19 FSM R. 617, 619 (Pon. 2014).

Although joint representation of a defendant in a criminal case is possible, the risk of error 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 the requirements are met. FSM v. Kimura, 19 FSM R. 617, 619 n.2 (Pon. 2014).

– Right to Silence

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed.

Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The privilege against self-incrimination is designed to prevent the use of devices to subvert the will of an accused. This protection has its roots in the United States Constitution's fifth amendment. Historically, the linchpin of this principle has been to prohibit the compelling of evidence of a testimonial or communicative nature. The protection does not extend to non-testimonial evidence such as fingerprints, handwriting exemplars, voice exemplars, or blood samples for purposes of determining a person's blood alcohol level, or the admission into evidence of a person's refusal to take a blood alcohol test. Sigrah v. Kosrae, 12 FSM R. 320, 331 (App. 2004).

The larger question is not whether a statute technically requires an act versus a statement, but whether the driver's failure to produce his license was compelled by the state in violation of the right against self-incrimination. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

While a statute may be said to "compel" compliance with its requirement that a driver display his driver's license upon request by a police officer, it is manifestly the case that in such a sense every law specifying a positive duty and a penalty for failure to comply with that duty may be said to "compel" the required conduct. But this generalized characteristic of all effectively enforceable laws is a different question from whether the state coerced the driver's failure to display his license when the police officer requested him to do so. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

A driver may not lay his own conduct in failing to have his license in his possession and failing to produce it upon an officer's request, at the statute's feet by claiming that it requires him to incriminate himself. The police officer who requested the driver to produce his license cannot be said to have prevented him from displaying his license, or to have engaged in any other type of coercive conduct. The short of it is that the state did not compel the driver's failure to produce his driver's license. Sigrah v. Kosrae, 12 FSM R. 320, 332 (App. 2004).

The constitutional privilege against self-incrimination is not meant to be a refuge for those who, by their own conduct and without any coercive action on the part of the state, fail to comply with the reasonable requirements of a valid statute. Sigrah v. Kosrae, 12 FSM R. 320, 332-33 (App. 2004).

Failure to produce a driver's license upon a police officer's request in contravention of a statute does not constitute compelled evidence within the meaning of either Article II, § 1(f) of the Kosrae Constitution, or Article IV, § 7 of the FSM Constitution, so as to render the statute unconstitutional under either of those constitutional provisions. Sigrah v. Kosrae, 12 FSM R. 320, 333 (App. 2004).

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The central standard for application of the privilege against self-incrimination has been whether the claimant is confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination. Prospective acts will ordinarily involve only speculative and insubstantial risks of incrimination. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

When a pretrial release order's reporting requirement is prospective only and the movants are not required to report any past transactions, but only ones that had not yet taken place, the reports cannot incriminate any defendant for any of the offenses charged in the pending criminal information. When sending money abroad is not a criminal or regulatory offense, merely reporting it cannot, by itself, incriminate anyone. When the condition to report money sent abroad is prospective only and a defendant may arrange his, her, or its affairs so that there is nothing to report that would be evidence of some act for which criminal charges might be brought, it presents the ordinary case for prospective acts — the movants are not confronted by any substantial and real hazard of self-incrimination and therefore may not rely on the

right against self-incrimination for relief from a pretrial release order to report money sent abroad. 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).

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).

An attorney is not liable for criminal contempt for advising his client in good faith to assert his or her privilege against self-incrimination. For an attorney in the Federated States of Micronesia to be liable for criminal contempt for advising a client to assert his or her right to self-incrimination, the attorney must have given that advice in bad faith. FSM v. Kansou, 13 FSM R. 344, 349 (Chk. 2005).

A person is "in custody" when a person's freedom is substantially restricted by a police officer. For example, where a person's freedom is substantially restricted by a police officer by being placed into a police car, based upon a police officer's suspicion that the person was involved in the crimes committed earlier that evening, that person is considered arrested for the purpose of the right to be advised of his constitutional rights to remain silent and to have legal counsel. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

A person who is stopped for a routine traffic offense is not in custody, for the purpose of requiring Miranda warnings, and persons who are stopped at a roadblock, where a person's freedom of movement is not substantially restricted or controlled, are not considered to be in custody and not considered to be arrested. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

When a defendant was followed by the Kosrae State Police, stopped at a traffic stop, questioned briefly and asked to perform field sobriety tests; when the traffic stop was conducted on a public road, where passersby could witness the interaction of the police officers and the defendant and was conducted by only two police officers, which created a non-threatening situation; when the officers did not tell the defendant that he would be going to jail; and when there was no needless delay in the administration of the field sobriety tests, the defendant, when he was asked to perform the field sobriety tests, was not considered arrested and was not in custody for the purposes of Miranda rights, and the state was not required to provide the defendant his Miranda rights prior to administration of the tests. Kosrae v. Phillip, 13 FSM R. 449, 453 (Kos. S. Ct. Tr. 2005).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. There exists a presumption against such waivers. FSM v. Kansou, 14 FSM R. 150, 151 (Chk. 2006).

The burden of proof is on the prosecution to show that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. The standard of proof the prosecution must meet is the preponderance of the evidence. FSM v. Kansou, 14 FSM R. 150, 151-52 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's

evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The government's drafting of the defendant's affidavit, which the defendant signed and had notarized at the FSM Supreme Court, Palikir, Pohnpei, while not in the presence of any prosecution team member, does not make that affidavit the product of an unknowing or involuntary waiver of the defendant's rights. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A person may refuse to testify against himself in two situations. First, a person may invoke the privilege in a criminal trial in which that person is a defendant. Second, a person may invoke the privilege in any other proceeding, civil, criminal, formal or informal, where the answers might incriminate him in future criminal proceedings. FSM v. William, 16 FSM R. 4, 9 n.4 (Chk. 2008).

For a defendant to waive his right to silence or to counsel, he must do so knowingly and intelligently. The burden is on the government to show not only that the waiver was knowingly and intelligently given, but that it was given before any statement was made. There exists a presumption against such waivers. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the court, based upon the witnesses' testimony, including their respective demeanor in the courtroom during the hearing, concludes that the accused was properly advised of his rights, including the right to remain silent, before he confessed, the court will deny a motion to suppress a confession that is based on the ground that a waiver was not knowingly and intelligently given. Chuuk v. Suzuki, 16 FSM R. 625, 629 (Chk. S. Ct. Tr. 2009).

When the officers' investigatory stop of the defendant and their questioning him about suspicious circumstances did not constitute an arrest, the officers were not required to advise the defendant of his right to remain silent when they first approached him on the dock. FSM v. Phillip, 17 FSM R. 413, 420 (Pon. 2011).

When the officers had reasonable suspicion, based on specific and articulable facts, to perform an investigatory stop of the defendant after he disembarked from the *Voyager* on December 27, 2009, and when the defendant was not compelled to make an explicit or implicit disclosure of incriminating testimonial information since he volunteered to help the officers locate his backpack, he was not at that time, entitled to a privilege against self-incrimination under FSM Const. art. IV, § 7. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

The FSM Constitution protects the due process rights of all people accused of a crime. These rights include the right to be informed, the right against self-incrimination, and the right to have an attorney present at the time of questioning. These rights, along with others, were codified under 12 F.S.M.C. 214 and 218. The remedy for unlawful violations of these due process rights shall not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

The statutory protections are reviewed under a two-part analysis: first, under a statutory review of whether the defendant knowingly and intelligently waived his rights before giving a statement to the police. Second, they are reviewed under a constitutional backdrop of whether the defendant voluntarily waived those rights. This second look is often cursory, or entirely unnecessary, in the ordinary case where no investigatory irregularities are implicated. This two-part analysis is ultimately the inquiry into whether a defendant, knowingly, intelligently, and voluntarily waived his or her rights. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

For a defendant to waive his right to silence or to counsel he must do so knowingly and intelligently. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

A defendant's constitutional right against self-incrimination is an important right and, although an implied waiver of the right might be valid, there is a presumption against such waivers. For waiver to be effective, there must be a clear and unmistakable warning of the rights being waived. FSM v. Ezra, 19 FSM R. 497, 509 (Pon. 2014).

The right against self-incrimination is a privilege that may be waived by defendants and is a purely personal privilege that may not be claimed by a corporation that is named as a defendant in a criminal case. FSM v. Tokiwa Maru No. 28, 19 FSM R. 621, 626 & n.9 (Pon. 2014).

– Robbery

When one person, encouraged by the defendant to commit an assault, carries out the assault and then proceeds to commit robbery by the taking of turtle meat from the possession of the assaulted person, the defendant is not guilty of robbery where: 1) he did not suggest taking of the turtle meat or anything of value; 2) there is no showing that the could have foreseen the assault would be followed by the taking of something of value; and 3) the defendant left the premises before the turtle meat was taken. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

Robbery requires a linkage between the threat or use of violence and the taking of something of value. FSM v. Carl, 1 FSM R. 1, 2 (Pon. 1981).

In robbery, as defined in 11 F.S.M.C. 920, the element of use or threatened use of immediate force or violence must be shown to have preceded or been concomitant or contemporaneous with the taking. Andohn v. FSM, 1 FSM R. 433, 446-47 (App. 1984).

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).

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

It is reasonably foreseeable that a robbery of watch and money from a Korean construction worker may be a probable consequence of a common plan to take a bottle from "some Koreans," and the person who suggests the plan and initiates efforts to attack one of the construction workers may be held guilty of aiding and abetting the robbery of watch and money carried out by his companions against another Korean worker, immediately after the defendant initiated the first attack. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

– Sentence

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Mudong, 1 FSM R. 135, 147-48 (Pon. 1982).

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).

The government's failure to prove the assertion in its information that a dangerous weapon was used to cause the victim to submit to the sexual assault need not result in dismissal of the case. It merely prevents an application of greater punishment available under 11 F.S.M.C. 914(3)(b). Buekea v. FSM, 1 FSM R. 487, 493-94 (App. 1984).

The statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. Laion v. FSM, 1 FSM R. 503, 528 (App. 1984).

When two statutory provisions aimed at similar types of wrongdoing and upholding citizen and public interests of the same nature would apply to a solitary illegal act, which caused only one injury, the statutes will be construed not to authorize cumulative convictions in absence of a clear indication of legislative intent. However, the government is not denied the right to charge separate offenses to guard against the risk that a conviction may not be obtained on one of the offenses. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

The only power given to the executive to modify a sentence is the power to grant pardons and reprieves. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

No authority exists for the court to grant home visits. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

The doctrine of separation of powers does not prevent courts from modifying sentences even though the effect of modification may be the same as commuting the sentence. Kosrae v. Mongkeya, 3 FSM R. 262, 263-64 (Kos. S. Ct. Tr. 1987).

Commutation powers affect the enforcement of the judgment whereas the modification powers affect the judgment itself. Kosrae v. Mongkeya, 3 FSM R. 262, 265 (Kos. S. Ct. Tr. 1987).

The Kosrae Constitution did not intend for the executive's power to commute a sentence to prevent the Kosrae State Court from modifying its own sentencing orders or to prevent the appellate division of the Federated States of Micronesia from reviewing a sentencing order of the state court. Kosrae v. Mongkeya, 3 FSM R. 262, 266 (Kos. S. Ct. Tr. 1987).

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

Both cumulative and concurrent sentencing are logically not mentioned in 11 F.S.M.C. 1002, because they are not alternatives to the punishments specified by the separate criminal statutes, but rather the standards from which the "authorized sentences" of 11 F.S.M.C. 1002 deviate. Plais v. FSM, 4 FSM R. 153, 155 (App. 1989).

The authority to impose consecutive punishments for different crimes can be understood to be within the powers which the legislature has implicitly granted to the court in its overall scheme of criminal law; since each crime in the criminal code carries with it a separate and distinct punishment, it is logical to infer that when a person commits multiple crimes arising from more than one act, Congress intended that person to be punished separately for each offense. Plais v. FSM, 4 FSM R. 153, 155 (App. 1989).

If a defendant himself is incapable of paying restitution and he has made a request for assistance to his

family, the family's bad faith in not paying cannot be imputed to the defendant and result in increased imprisonment. Gilmete v. FSM, 4 FSM R. 165, 166 (App. 1989).

The sentencing judge has authority to make a broad inquiry into the background of a defendant; specifically, the court may consider even cases in which the defendant was accused but not convicted. Kallop v. FSM, 4 FSM R. 170, 177 (App. 1989).

A sentencing judge may properly consider factors which would show trafficking of a controlled substance in a previous case, even though in the earlier case the defendant had pled guilty to possession and the trafficking charge had been dismissed. Kallop v. FSM, 4 FSM R. 170, 177 (App. 1989).

In the absence of authority derived from the Constitution, statutes or court rules, judges of the FSM Supreme Court are bound by their own sentencing orders arrived at through the normal exercise of criminal jurisdiction. FSM v. Likitimus, 4 FSM R. 180, 181 (Pon. 1990).

The trial division of the FSM Supreme Court has no power to amend its sentences at will. FSM v. Likitimus, 4 FSM R. 180, 181 (Pon. 1990).

The National Criminal Code does not contemplate routine application of the maximum or any other specific punishment but instead requires individualized sentencing, that is, court consideration of a broad range of alternatives, with the court's focus at all times on the defendant, the defendant's background and potential, and the nature of the offense, with the "overall objective" of the exercise of discretion being to "make the punishment fit the offender as well as the offense." Tammed v. FSM, 4 FSM R. 266, 272-73 (App. 1990).

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).

When, before sentencing, a beating has been administered to a defendant by family and friends of the victim to punish the defendant for the crime for which he is to be sentenced, the sentencing court's refusal to consider the beatings is an inappropriate attempt to achieve a larger social purpose and an unacceptable diversion of the sentencing process when the refusal is not motivated by defendant's guilt or status but instead is an attempt to influence the future conduct of people who were not before the court and who had not committed crimes similar to those committed by defendants. Tammed v. FSM, 4 FSM R. 266, 276-77 (App. 1990).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. Tammed v. FSM, 4 FSM R. 266, 278 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

Sentencing is to be individualized, and the overall objective must be to make the sentence fit the offender as well as the offense. The sentencing court's focus must be the defendant, the defendant's background and potential, and the nature of the offense. The term of imprisonment fixed in the sentence must be the time which the sentencing judge believes the convicted person justly should be required to serve. There is no justification for the sentence to include an additional factor in recognition of the possibility of parole. Kimoul v. FSM, 5 FSM R. 53, 60-61 (App. 1991).

Because the defendants were convicted of the crime of aggravated sexual assault, which by nature is a violent crime, especially in this case where it was random, if released there is a likelihood they would pose a danger to others in the community. But because the defendants have committed one wrongdoing in the three years since their conviction other factors are needed to require denial of stay of sentence. FSM v. Hartman (II), 5 FSM R. 368, 369-70 (Pon. 1992).

Where defendants have willfully violated the court's previous order to remain confined to the Municipality of U, thus indicating a risk of flight, and where there is no substantial question of law or fact, defendants' motion for a stay of sentence pending appeal will not be granted. FSM v. Hartman (II), 5 FSM R. 368, 370-71 (Pon. 1992).

In considering the mitigation in sentencing to be given without regard to custom because of the beatings received by the defendants, the severity of the beating is the primary consideration. FSM v. Tammed, 5 FSM R. 426, 428 (Yap 1990).

The court cannot give further mitigative effect in sentencing to reflect the customary nature of the beatings if the court cannot find from the evidence presented that the beatings were customary. FSM v. Tammed, 5 FSM R. 426, 429 (Yap 1990).

The purpose of a sentencing hearing is to determine an appropriate sentence for criminal violations of which a defendant has already been convicted, not to reopen already decided issues of liability. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219 (Pon. 1995).

Congress, by prescribing a mandatory minimum penalty, has determined that the penalty is proportionate to the nature of the crimes involved. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219 (Pon. 1995).

Where a statute imposes a mandatory minimum fine and does not permit probation, a court cannot impose probation without violating the statute. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 219-20 (Pon. 1995).

Mitigating evidence cannot be used to depart below the mandatory minimum penalty required by the statute. A court may only consider that evidence in deciding whether the minimum sentence should be enhanced. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 220 (Pon. 1995).

A single, consolidated sentence for multiple offenses is proper, and when some convictions are vacated on appeal the consolidated sentence will be affirmed if it neither exceeds the maximum sentence of all the remaining convictions combined nor exceeds the maximum possible sentence for the most serious conviction remaining. Yinmed v. Yap, 8 FSM R. 95, 103 (Yap S. Ct. App. 1997).

Although a single, consolidated sentence for multiple offenses is proper, 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. A sentence which tracks the individual counts in this manner facilitates appellate review, and obviates the need for the appellate court to review the propriety of the entire sentence in the event any count underlying a general sentence is vacated. Yinmed v. Yap, 8 FSM R. 95, 103 (Yap S. Ct. App. 1997).

Where there is a plain legislative intent to impose separate punishments a court may reject a proposal

that the sentences for those counts run concurrently. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181-82 (Pon. 1997).

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).

If, for the same act, both a lesser included and a greater offense are proven, the court should then enter a conviction on only the greater offense. A defendant cannot be sentenced on both the higher and the lesser included offense arising out of the same criminal transaction. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 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).

Sentencing is to be individualized, and the overall objective is to make the punishment fit the offender as well as the offense. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

The sentencing court's focus at all times must be on the defendant, the defendant's background and potential, and the nature of the offense. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

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).

The original sentence is to be one which the sentencing court has considered carefully and has concluded fits the offender as well as the offense. Any change in that sentence will not be lightly won. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM R. 183, 188 (App. 1999).

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).

A trial judge may impose a sentence less than the maximum permitted by law. Cheida v. FSM, 9 FSM R. 183, 189-90 (App. 1999).

A sentence is individualized when the maximum is not imposed, the defendant's work schedule is taken into account, and an incentive is provided for compliance with other court orders. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

Imposing a fine is inadequate when the money diverted to the court would otherwise be used to repay the victim. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

A jail sentence with work release enables a defendant to continue his employment, meet his financial obligations to his family and fulfill a trial court judgment to repay the victims. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

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).

By statute, the Chuuk State Supreme Court, at any time before imposition of sentence, may suspend imposition of sentence on conditions, and if the conditions are fully satisfied, it must vacate the conviction, but this statute is only applicable before the imposition of sentence and not in a case where the sentence was not only imposed, but was fully served. Trust Territory v. Edgar, 11 FSM R. 303, 307 (Chk. S. Ct. Tr. 2002).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 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).

Generally, a criminal sentence starts when it is pronounced from the bench unless the sentence contains a provision that the sentence starts at some later time. A jail sentence starts to run the date the defendant is received at the jail or other place of detention. FSM v. Fritz, 13 FSM R. 88, 90-91 (Chk. 2004).

A sentence is imposed when it is pronounced in open court. This is a constitutional as well as procedural requirement. The rules require the defendant's presence at sentencing. This is also required by the FSM constitutional provision, requiring a public trial and giving a defendant the right to confront witness against him. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

A written sentence must conform to the one delivered orally. If it does not, the oral sentence controls. FSM v. Fritz, 13 FSM R. 88, 91 n.1 (Chk. 2004).

Work release is a grant of leniency and privilege granted to an imprisoned defendant at the court's discretion. It is not an entitlement to a defendant. The court will not grant work release when, based upon the papers filed, arguments of counsel, the record, and in the interests of justice, the court concludes that modification of the defendant's sentence to allow work release is not warranted and the interests of justice will be best served by completion of the individualized sentence imposed upon him, including his imprisonment in jail without work release for his entire sentence, as specified in the sentencing order. Kosrae v. Sigrah, 13 FSM R. 190, 192 (Kos. S. Ct. Tr. 2005).

Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution, but when there was no customary reconciliation reached among the defendant and the victims, there is no consideration of this factor for sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

When there was no evidence submitted to support defendant's contention that he, as an adult male in the family, is authorized under custom to commit an assault and battery upon two selected females in his family in order to stop an argument among three females in his family; when there was no evidence submitted to support defendant's argument that his actions were appropriate and taken in accordance with custom; and when although the defendant's sister initiated the argument with victims, the defendant committed the assaults and batteries upon the non-aggressors in the argument only further inciting the argument and raising tensions among the family instead of encouraging resolution of the argument and initiating reconciliation and peace, the defendant's argument that his actions were taken properly in accordance with custom, based upon his traditional authority as an adult male in the family must therefore be rejected in consideration of sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

In *Kosrae*, in imposing a sentence, state law specifically permits the court to consider a convicted person's criminal record by hearing evidence of the convicted's good or bad character, including a criminal record. A criminal record includes the record or file of the criminal proceedings against an accused, and necessarily includes documentation of disposition of the case, including conviction and sentencing based upon a plea of guilty or *nolo contendere*, judgment of acquittal, or dismissal. Consequently, a plea of *nolo contendere* in a prior case and the judgment and sentencing, may be heard and considered in sentencing a defendant. *Kosrae v. Tulensru*, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

A defendant's criminal record is considered evidence of the defendant's character and is therefore admissible in a sentencing hearing. *Kosrae v. Tulensru*, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

A court may consider all criminal matters in which the defendant was accused, even if not convicted. A sentencing judge's authority is to make broad inquiry into the defendant's background. Specifically the court may consider even cases of which the defendant was accused but not convicted. *Kosrae v. Tulensru*, 14 FSM R. 115, 124 (Kos. S. Ct. Tr. 2006).

If a defendant is well enough to attend the sentencing hearing at the courthouse, the defendant must appear at the courthouse, but if he is not well enough to attend the sentencing hearing at the courthouse, then the sentencing hearing will be held at the hospital in a conference room or other suitable location at which the sentencing hearing can be conducted. *Kosrae v. Tulensru*, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

When the justice sentencing the defendant has resigned from the court and it is the justice's final day of service as a justice, a motion for recusal from sentencing on that ground is meritless. It is within the judge's authority and is his duty to conduct the sentencing hearing especially since the sentencing hearing was delayed at the defendant's request to address the issue of admission of defendant's prior criminal record. *Kosrae v. Tulensru*, 14 FSM R. 115, 126 (Kos. S. Ct. Tr. 2006).

That the judge has other criminal cases pending which he has not completed, and has granted continuances in other cases are meritless grounds to recuse the judge from sentencing the defendant on his final day as a judge when those matters are unrelated to this case and trial had been completed and the only action left is the imposition of sentence. *Kosrae v. Tulensru*, 14 FSM R. 115, 126-27 (Kos. S. Ct. Tr. 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).

Even if the finding of guilt had been made in open court with the defendant present, the case would still have to be remanded to the trial court when there was no public imposition of sentence with the defendant present. When a sentence is imposed, the defendant's presence is required because the defendant must be present at every stage of the trial including the finding of the court and at the imposition of sentence. *Neth v. Kosrae*, 14 FSM R. 228, 232 (App. 2006).

The defendant's right (found in Rule 43) to be present at the imposition of sentence is constitutionally based on the confrontation and due process clauses. *Neth v. Kosrae*, 14 FSM R. 228, 233 & n.3 (App. 2006).

When sentencing a criminal defendant, the sentencing court must eyeball the defendant at the instant it exercises its most important judicial responsibility. *Neth v. Kosrae*, 14 FSM R. 228, 233 (App. 2006).

Although *Kosrae* Criminal Rule 43(b) permits a criminal defendant, once trial has started with the defendant present, to voluntarily absent himself or herself from the trial or from the oral pronouncement of findings, it does not permit a criminal defendant to be absent from the court's imposition of sentence or to

waive his or her right to be present at the imposition of sentence. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

A reason illustrating the importance of the public imposition of sentence is that the written sentence must conform to the one delivered orally. If it does not, the oral sentence, not the written sentence, controls. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

The general public also has a right and interest in a public sentencing that enables the public to learn the sentence and court's reasons for it. Neth v. Kosrae, 14 FSM R. 228, 234 (App. 2006).

There can be no cumulative punishment for a single offense absent clear legislative intent. Kinere v. Kosrae, 14 FSM R. 375, 383 (App. 2006).

A harsh sentence does not constitute manifest injustice, particularly when the sentence conforms to statutory guidelines. Kinere v. Kosrae, 14 FSM R. 375, 386 n.8 (App. 2006).

That the charge on which the defendant was convicted is a serious one which involved dishonesty by persons holding high-ranking positions in government and that the public should be conveyed that message are factors to be taken into account when sentence is imposed. FSM v. Engichy, 14 FSM R. 573, 574 (Chk. 2007).

The maximum sentence for violating 11 F.S.M.C. 701 was raised in the 2001 criminal code from three years to ten years. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

The trial court's imposition of a one year sentence of imprisonment for a violation of 11 F.S.M.C. 701 was not an abuse of discretion when there is nothing in the record which suggests that the sentence was anything but reasonable in light of the evidence presented to the court at the time of sentencing, and when, at the time of the defendant's conduct giving rise to his conviction, a violation of 11 F.S.M.C. 701 could result in a period of incarceration of up to 3 years. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

The trial court did not abuse its discretion when its consideration of the pre-sentence report's inclusion of information concerning another criminal matter against the defendant obviously had no negative effect on the sentence imposed, nor did the trial court's consideration of it prior to the imposition of the defendant's sentence reveal an abuse of discretion by the trial court. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

At the time of sentencing, a trial court is entitled to consider a defendant's prior conviction, and the plea upon which it was based, even when the prior conviction was based upon a nolo contendere plea because it is not only the plea that is considered, but the conviction based upon the plea as well. Tulensru v. Kosrae, 15 FSM R. 122, 128 (App. 2007).

An original sentence is to be one which the sentencing court has considered carefully and has concluded fits the offender as well as the offense. The sentencing should be individualized, and the overall objective is to make the punishment fit the offender as well as the offense. The sentencing court's focus at all times must be on the defendant, the defendant's background and potential, and the nature of the offense. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A sentence of six years incarceration is not unduly severe on a manslaughter conviction. It may even be considered lenient. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

Congress has granted the court the power to suspend jail sentences, to suspend the imposition of a sentence, and to parole prisoners after they have served part of their sentence, but it has not given the court the power to expunge convictions. FSM v. Erwin, 16 FSM R. 42, 45 (Chk. 2008).

Notice that the convicted person has a right to appeal must be given orally when a criminal contempt sentence is imposed. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 n.10 (App. 2011).

A guilty finding is not a "judgment of conviction" because in order to be a judgment of conviction, the "judgment of conviction" must set forth the plea, the findings, and the adjudication and sentence. Since a "judgment of conviction" must contain the sentence, it can only be entered after the sentence is pronounced. Benjamin v. Kosrae, 19 FSM R. 201, 204-05 n.1 (App. 2013).

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).

While a trial judge's failure to inform a criminal defendant of his right to appeal may be harmless error when the defendant has in fact timely appealed, the trial judge's failure at a sentencing hearing to address a criminal defendant personally and ask him if wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment is not harmless error. Benjamin v. Kosrae, 19 FSM R. 201, 206 (App. 2013).

A criminal defendant's right at a sentencing hearing to be personally addressed by the judge and to then make an unsworn statement on his own behalf in an effort to lessen the impending sentence is called the right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206 (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).

A trial judge's failure to personally address a criminal defendant and offer him an opportunity to allocute is not harmless error and the criminal defendant does not waive that right by failing to object to his lack of opportunity at the sentencing hearing. The right of allocution is a fundamental or substantial right. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

The trial judge, as noted in Kosrae Criminal Procedure Rule 32(a)(1), has the burden to personally address a criminal defendant at the sentencing hearing and to offer him the right to allocute and make an unsworn statement to the court. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

The law is clear that a defendant must be present in person at the time sentence is originally imposed and that he must be afforded the right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

When a criminal defendant was not afforded the right of allocution, his sentences will be vacated and the matter remanded for a new sentencing hearing. Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

Considering the seriousness of the sexual abuse charge, it is advisable that a presentence investigation and report be done as required by Kosrae Criminal Procedure Rule 32(c). Benjamin v. Kosrae, 19 FSM R. 201, 207 (App. 2013).

There is no authority that a crime is no longer a crime and the case must be dismissed once the accused has repaid all of the alleged financial losses, but, if the accused were found guilty, the repayment would likely have some effect on the degree of punishment. FSM v. Itimai, 20 FSM R. 131, 135 (Pon. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

A trial judge is required to publicly read out his sentence in open court, and if the trial judge fails to do so, he abuses his discretion because this is part of the constitutional right to a public trial. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

Courts differ on whether a consolidated sentence is proper. Some courts hold them improper, and even where they are proper, courts take two approaches. Some courts hold that a single sentence may be imposed for all offenses so long as it does not exceed the aggregate of sentences that might have been separately imposed on all the counts consecutively while other courts hold that a consolidated or general sentence, that is, one that does not specify the punishment imposed under separate counts of the information, will not be upheld if it exceeds the maximum term of punishment permissible under any single count. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

A seven-year sentence is improper and must be vacated when it exceeds the maximum sentence for the one conviction that the appellate court has affirmed. Ned v. Kosrae, 20 FSM R. 147, 155 (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).

The use of consolidated sentences should be avoided. Ned v. Kosrae, 20 FSM R. 147, 157 (App. 2015).

Although a consolidated sentence may be proper, it is inadvisable. The better practice is for the trial court to impose sentence on each count individually, indicating whether the sentences are to run concurrently or consecutively because such a sentence facilitates appellate review and obviates the need for a remand for re-sentencing. Lee v. Kosrae, 20 FSM R. 160, 168 (App. 2015).

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).

Under Rule 11(e), when a plea agreement contains sentencing recommendations, the court may impose a different sentence than that proposed by the government and the parties. FSM v. Bui Van Cua, 20 FSM R. 588, 590 (Pon. 2016).

A criminal defendant will be given credit for such time as he has been in the government's custody. FSM v. Bui Van Cua, 20 FSM R. 588, 591 (Pon. 2016).

A court's jurisdiction ends once the defendant has satisfied the sentence that had been imposed. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. FSM v. Phillip, 5 FSM R. 298, 301-02 (Kos. 1992).

Probation is inappropriate sentence when the defendant has departed from the FSM, not permitting the FSM to monitor or control its future behavior, and where the seriousness of its violations warranted a more serious sanction. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

The Kosrae State Court may modify an order of probation during the term of probation when the court finds a termination of probation serves the ends of justice and the best interests of the public and the defendant. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

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).

In most instances in which a court orders probation, a defendant is placed on probation without any intervening imprisonment or delay. A court often orders "delayed probation," but this is when the probationary period is to start after the defendant has completed a sentence of imprisonment for some other crime. However, these statements in regard to Criminal Rule 32 do not apply when the sentence is probation and an appeal is sought. FSM v. Fritz, 13 FSM R. 88, 91 (Chk. 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).

A sentence of probation is automatically stayed upon appeal until a starting date for probation is explicitly set by the court. As a general rule, the court must explicitly state when the probation period starts and, until it does, a sentence of probation will not start. FSM v. Fritz, 13 FSM R. 88, 92 (Chk. 2004).

Once a probationary period has elapsed the defendant has automatically satisfied the sentence imposed. FSM v. Edward, 20 FSM R. 335, 338 (Pon. 2016).

Since probation law is intended in part to rehabilitate the offender without imprisonment, it contemplates that during the probation period he will be within the jurisdiction of the court that retains control over him and will be available to probation officers for the performance of their duties. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

There is no authority to allow an FSM defendant with a remaining term on his probation to relocate to a foreign jurisdiction when that defendant has not produced any evidence that any steps have been taken in notifying or seeking permission from a court within that foreign jurisdiction for the purposes of monitoring his whereabouts and to oversee his compliance with his terms of release. The burden will be on the defendant to furnish proof of a court there that is willing to oversee the remaining term of his probation. FSM v. Bisalen, 20 FSM R. 471, 474 (Pon. 2016).

– Sentence – Probation – Revocation

Courts have uniformly held that sound policy requires that they be able to revoke probation for a

defendant's offense committed before the sentence commences. FSM v. Does, 1 FSM R. 580, 586 (Pon. 1984).

Revocation of probation of an alcohol dependent person because he consumed alcohol or because of alcohol related offenses for which he was convicted does not constitute cruel and unusual punishment in violation of the Constitution. FSM v. Phillip, 5 FSM R. 298, 300 (Kos. 1992).

Even if the defendant had been arrested merely for drinking alcohol the court would be compelled to return him to prison because the no-drinking condition had been imposed before the court became aware of the defendant's alcohol dependent condition and because compliance with that condition is fundamental to a proper probation. FSM v. Phillip, 5 FSM R. 298, 300-01 (Kos. 1992).

While the court is interested in the rehabilitation of a defendant, its greater interest is in protecting society at large from illegal conduct. When a court releases a convicted person on probation, it does so at its own discretion. Probation is a leniency granted by the court. It is not a right and revocation of probation should not be thought of as additional punishment. FSM v. Phillip, 5 FSM R. 298, 301-02 (Kos. 1992).

The issue of whether a defendant actually broke the law or that his arrest was unconstitutional is beyond the scope of a probation revocation hearing. The issues of whether a conviction is valid and constitutional should be taken to the appropriate court of appeals. FSM v. Phillip, 5 FSM R. 298, 302 (Kos. 1992).

A parole revocation hearing is significantly different than a trial. Although a court may not act capriciously in revoking probation, there is no need to establish beyond a reasonable doubt that the terms of the probation have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. FSM v. Phillip, 5 FSM R. 298, 302-03 (Kos. 1992).

The court cannot revoke a sentence of probation for acts that took place before the sentence started. Probation cannot be revoked upon the basis of a probation violation occurring before defendant was placed on probation. FSM v. Fritz, 13 FSM R. 88, 92 (Chk. 2004).

Kosrae statute provides that upon revocation of probation the court may impose a sentence which it may have initially imposed if the court had not suspended imposition of sentence. Kosrae v. Palik, 13 FSM R. 187, 189 (Kos. S. Ct. Tr. 2005).

When the defendant was sentenced to five years imprisonment, suspended with conditions of probation, and payment of a fine; when during the sentencing hearing, there was extensive discussion regarding payment of the fine by local produce instead of cash, to accommodate the defendant's difficulty in paying cash; when the defendant was verbally informed at the sentencing hearing that his violation of the probation conditions may result in revocation of probation and remand to jail for the remainder of his term of imprisonment and the sentencing order also clearly gave notice of remand to jail in case of violation of probation conditions; when the defendant agreed verbally and by signature to the plea agreement's recommended sentence of five years term; when the defendant presented no grounds in support of his request to modify the sentencing order; and when the court finds by clear and convincing evidence that the defendant violated his probation by committing assault and battery and did not pay the fine imposed, the defendant's suspended sentence is revoked and he is remanded to jail to serve his remaining term. Kosrae v. Palik, 13 FSM R. 187, 189-90 (Kos. S. Ct. Tr. 2005).

A motion to revoke a suspended sentence must be filed by the State, as it is the prosecuting entity. A motion to revoke a suspended sentence may be filed with or without an affidavit from the Court Marshal. The State Attorney General's Office may be informed of a probationer's alleged violation of probation conditions through several avenues: direct complaint, witness, police report, Court Marshal's affidavit etc. Kosrae is authorized by state law and court rules to file the motion to revoke suspended sentence based upon information provided to them. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

Probation and revocation of probation proceedings are governed by Kosrae State Code, Section 6.4909. Neither this statutory provision nor Criminal Rule 32.1 require the court marshal, probation officer or any other specific person to institute a revocation proceeding. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

Kosrae GCO 1998-03 establishes the probation officer's power to confine people for violations of suspended sentences, pre-trial and post-conviction release orders; it provides for the confinement and hearing procedure in cases where the person has been taken into custody by the probation officer, or where an arrest warrant has been executed by the Kosrae State Police; and it establishes the hearing procedure to ensure that a hearing on a revocation petition for a person held in custody is held as soon as possible. Kosrae v. Tilfas, 14 FSM R. 27, 31 (Kos. S. Ct. Tr. 2006).

When, based upon clear and convincing evidence of the defendant's assault and battery, the court finds that the defendant has violated his probation condition of "no violation of any national, state or municipal laws or ordinances," the defendant's probation will be revoked. Kosrae v. Tilfas, 14 FSM R. 27, 32 (Kos. S. Ct. Tr. 2006).

When a July 7, 2006 report of the defendant's non-compliance with his probation release conditions sought to revoke the defendant's probation, the defendant has not shown that a September 28, 2006 hearing date was not a hearing set within a reasonable time since he was without counsel and new, off-island counsel had to be assigned and since he had been released and was not being held pending his revocation hearing. And when any further delay after September 28, 2006, is attributable to the defendant and his requests for continuances, the ground that the defendant's hearing was not held within a reasonable time will be rejected as a ground to deny the motion to revoke his probation. FSM v. Kintin, 15 FSM R. 83, 85 (Chk. 2007).

Since the defendant had already started serving his sentence which included probation and weekends in jail when the alleged incident occurred, since the defendant violated his terms of probation while serving his weekend jail sentence, and since the defendant's term of probation had thus started before his violation, it would be unreasonable to hold that the court had no power to revoke the defendant's probation for an incident (if proven), which, if it had occurred two days earlier or one day later, the court clearly would have had the power to revoke probation. FSM v. Kintin, 15 FSM R. 83, 86 (Chk. 2007).

Although a court may not act capriciously in revoking probation, the government does not have to establish beyond a reasonable doubt that the probation terms have been violated. A court may revoke probation if it is reasonably satisfied that the terms of the probation were violated. FSM v. Kintin, 15 FSM R. 83, 86 (Chk. 2007).

Rule 11 does not apply to hearings on the revocation of probation or supervised release. Rule 11 on its face applies only to the procedures a court must follow before accepting a plea of guilty or nolo contendere. The rule is addressed to the taking of a plea, not the imposition of sentence or the revocation of probation. FSM v. William, 16 FSM R. 4, 7-8 (Chk. 2008).

A probation revocation is not a stage of a criminal prosecution, but does result in the loss of liberty. Accordingly a probationer is entitled to a preliminary and a final revocation hearing. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

The due process concerns in a Rule 11 plea hearing do not apply with equal force to the context of a revocation of probation or supervised release. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

Constitutionally and procedurally, the revocation of probation, of supervised release, and of parole are treated alike. FSM v. William, 16 FSM R. 4, 8 n.3 (Chk. 2008).

At a revocation hearing, not only is a Rule 11 voluntariness colloquy not required before a court may accept a defendant's admission of supervised release violations, but such a formal colloquy would be ill

suit to the context of supervised release proceedings. In contrast to the adversarial setting that characterizes the offering of a guilty plea, a revocation of supervised release proceeding features the involvement of a parole officer, who is responsible for representing the defendant's best interests to the greatest extent possible consistent with the community's welfare. To superimpose formalistic procedures such as a Rule 11 colloquy onto this context, however much it may be sound practice for judges to elicit some indication of voluntariness for the record, is neither required by due process nor necessarily conducive to a more effective accomplishment of the goals of probation. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

Admissions to probation violations are not made in the course of a criminal trial and do not give rise to a different statutory offense or to an increase in punishment on the underlying conviction. Thus, by not contesting the revocation motion and having his probation revoked, a defendant would not be punished for any new crime, nor would his punishment be increased, he would only be punished for the crimes he had already pled guilty and he would be serving the sentence he received for those crimes. FSM v. William, 16 FSM R. 4, 8-9 (Chk. 2008).

A probation revocation hearing is not analogous to a criminal trial or prosecution and the admission of a probation violation is not the functional equivalent of a guilty plea. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The rights which a probationer enjoys during a revocation proceeding are simply not co-extensive with those enjoyed by a defendant during a prosecution for a substantive offense. For revocation hearings there is no constitutional (or statutory) requirement of a voluntariness colloquy similar to that required under Rule 11 and a defendant in a probation revocation hearing who admits to probation violations does not have to be informed of the maximum possible sentence because he was already informed of that when he pled guilty to the original offense or before he was sentenced. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

A guilty plea is itself a conviction, ending the controversy, but admissions of probation violations [unlike guilty pleas] do not end the controversy. The judge must still decide the more difficult issue whether the violations warrant revocation of probation. Thus, admissions of probation violations, unlike guilty pleas, do not automatically trigger sentencing. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Unlike in a criminal prosecution where it is constitutionally required, in a probation revocation the government does not have to prove beyond a reasonable doubt that the probation terms have been violated. The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

The constitutional protection not to be twice placed in jeopardy does not apply to a revocation hearing because revocation and a criminal prosecution can both be based on the same transaction without implicating double jeopardy concerns. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

Since probation revocation is not a stage in a criminal prosecution, the defendant's privilege against self-incrimination is limited to where his answers might incriminate him in a future criminal proceeding. FSM v. William, 16 FSM R. 4, 9 (Chk. 2008).

When the most likely reason for the arrest and later court appearance of a prisoner on work release was not to charge him with a new crime but to revoke or modify his work release conditions, the rule concerning revocation of probation, rather than the statute concerning charging a crime, is the applicable law. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

When Chuuk seeks to revoke a prisoner's work release for violating a release condition, the revocation hearing, unless waived by the probationer, must be held within a reasonable time, and whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he must be afforded a prompt hearing before a judicial officer to determine whether there is probable cause to hold the probationer for a revocation hearing. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since a convicted inmate is a probationer only when he is on work release and is otherwise properly in custody, the court must conclude that a preliminary probable cause hearing within 48 hours of the inmate's arrest for violating work release conditions would be prompt within the meaning of Chuuk Criminal Rule 32.1 and that a revocation hearing within 48 hours of the arrest for violation of probation would be within a reasonable time. Chuuk therefore cannot be held civilly liable for the arrestee detention from September 8, 2010 to September 10, 2010, of a prisoner arrested for a work release violation. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

Since Chuuk Criminal Procedure Rule 32.1 provides that the person whose release Chuuk is trying to revoke be given written notice of the alleged probation violation and informed of the evidence against him and given an opportunity to appear and to present evidence and to question adverse witnesses and be represented by counsel, when, other than counsel at the hearing, the plaintiff was not given any of these Rule 32.1 procedural rights his remedy for that failure would be a denial of Chuuk's attempt to revoke his work release. Inek v. Chuuk, 19 FSM R. 195, 199-200 (Chk. 2013).

Once a prisoner arrested for a work release violation has been detained in the arrestee holding area past 72 hours without being charged with work release violations under Chuuk Criminal Procedure Rule 32.1, his continued detention there becomes unlawful. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period. Courts have uniformly held that jurisdiction continues after the probation term so long as formal revocation proceedings were commenced within the probation term. FSM v. Edward, 20 FSM R. 335, 338 (Pon. 2016).

Jurisdiction over a defendant can be extended for a violation committed during the probationary period, but only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued before the expiration of the probationary term. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Due process requires that the sentencing court, not the probationary officer, ultimately determine whether revocation proceedings will be initiated. The sentencing court may initiate such proceedings sua sponte based on information acquired from any source, including the probation officer who is primarily responsible for acquiring and presenting such information to the sentencing court. Since Criminal Rule 32.1 does not specify who may file a report of violation, any person may supply the court with that evidence. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Due process requires that for a warrant to issue, the report must demonstrate "probable cause" and this determination must be made by a judicial officer before jurisdiction is extended. Thus, the sentencing court takes primary responsibility for initiating probation revocation proceedings. To delegate that authority would be tantamount to abdicating the judiciary's sentencing responsibility to the executive. Ultimately, the court retains the discretion to reject or accept the probation officer's recommendations. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

A petition for revocation, an affidavit of violation, or a notice of non-compliance, however styled, is merely a report or a motion, but does not by itself initiate revocation proceedings. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Only the court can initiate revocation proceedings and its usual practice is to issue an order notifying the defendant of the allegations and setting a hearing. This action may be made by issuing an arrest warrant, a summons, an order, or even a margin order, but in any case the procedure requires a judicial determination of probable cause to be made before the revocation proceedings are initiated. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

If the court had formally initiated the revocation procedure before the expiration of the probationary

term, jurisdiction would have been extended over the defendant and a revocation hearing held, but since the court did not do so before the defendant's probation ended on March 31, 2015, the court's jurisdiction over the defendant ended then. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Regardless of the lesser standards that apply in revocation proceedings, due process is required. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

A defendant is entitled to a judicial determination of probable cause and to notice of those proceedings before the court can hold a delayed revocation hearing. This rule is jurisdictional. Ordinarily, when the warrant, summons, or order is executed, filed, and served, the defendant is provided with notice of this process, and the affidavit of violation is attached or adequately summarized therein, thereby fulfilling FSM Criminal Rule 32.1's procedural requirements. The court must set this process in motion before the probationary sentence's expiration. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

Once a probationary period has elapsed, the defendant has automatically satisfied the sentence imposed, but extended jurisdiction over a defendant is proper if the revocation process has been set in motion during the probationary period. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Jurisdiction over a probationer can be extended for a violation committed during the probationary period only through the issuance of a summons, arrest warrant, or comparable court order notifying defendant of the allegations or issued before the probationary term's expiration. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

The court may revoke probation if it is reasonably satisfied that the probation terms were violated. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

If the court determines that one or more probation violations occurred but that revocation is not necessary, it will sometimes be appropriate for the court to increase the conditions under which the defendant is allowed to remain on probation. Among the possibilities is extension of the probation period, which is constitutionally permissible. FSM v. Akapito, 20 FSM R. 579, 581 (Chk. 2016).

Depending on how the analysis is approached, a defendant's probation was either extended seven years or his probation was revoked and then, rather than return him to jail, his probation was reinstated for seven years. Either way, the result is that the defendant will have another seven years within which to finish paying his restitution. FSM v. Akapito, 20 FSM R. 579, 581-82 (Chk. 2016).

A court's jurisdiction over probationary matters lasts only as long as the probationary term. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

When no action has been taken against a defendant during the term of probation, no action can be initiated after the probationary period's expiration. The "triggering event" that would properly initiate proceedings and grant a court jurisdiction after the probationary period's conclusion is generally considered to be more formal revocation proceedings such as issuing, before the probation's expiration, a summons or an arrest warrant alleging a probation violation. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

When the defendant violated probation by not reporting to his probation officer for the last four months of his probation and by not paying the court-ordered \$70 restitution to the victim, but the probation officer did not inform the Attorney General's Office of the probation violations until after the defendant's probationary term had already expired, and when the defendant was not summoned, which was the proper triggering procedure to grant this court jurisdiction, until over eleven months later, such delay in initiating the proper triggering event results in the court losing jurisdiction over the matter. It therefore cannot grant a revocation motion. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

Due to the state's lack of timeliness to issue a warrant or summons during the probationary term, this court lacks jurisdiction over a probation revocation matter. Chuuk v. Rimuo, 21 FSM R. 19, 21 (Chk. S. Ct. Tr. 2016).

Tr. 2016).

– Sentence – Reduction of Sentence

Rule 35 of the Pohnpei Supreme Court Rules of Criminal Procedure is void because the statutes and Constitution of Pohnpei do not give the power to reduce sentences to the courts. Rather, the statutes and Constitution of Pohnpei explicitly reserve that power for the executive branch, in the person of the Governor. Pohnpei v. Hawk, 3 FSM R. 17, 24 (Pon. S. Ct. Tr. 1986).

There is no provision in the National Criminal Code of the Federated States of Micronesia permitting the court to modify a sentence after judgment. The rules only permit the court to reduce a sentence within 120 days after the sentence has been imposed. FSM v. Finey, 3 FSM R. 82, 84 (Truk 1986).

Even when mitigative effect cannot be given due to the beatings suffered by the defendants the court may consider a reduction of sentence pursuant to FSM Crim. R. 35. FSM v. Tammed, 5 FSM R. 426, 430 (Yap 1990).

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).

FSM Criminal Rule 35 permits the sentencing judge to reduce a sentence within 120 days after sentence is imposed. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

Although the court may reduce a sentence simply because it has changed its mind, it usually will not do so where nothing is shown to justify a reduced sentence that was not already considered by the court when the initial sentence was fixed. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

Occasions will arise when a conscientious judge, after reflection or upon receipt of new probation reports or other information, will feel that he has been too harsh or has failed to give weight to mitigating factors which properly should have been taken into account. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

While it is a sobering fact that any incarceration will interrupt family life, that fact alone, however, does not constitute a basis upon which to reduce defendant's sentence when the court was aware of the defendant's family situation at the time of sentencing, and the motion for reconsideration presents nothing that could not have been presented then. FSM v. Faen, 9 FSM R. 416, 417 (Yap 2000).

The court may reduce a sentence from one of incarceration to one of probation within 120 days after the sentence is imposed, or within 120 days after the court's receipt of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or after entry of any order or judgment denying review of, or having the effect of upholding, a judgment of conviction. FSM v. Akapito, 11 FSM R. 194, 195 (Chk. 2002).

The FSM Supreme Court has jurisdiction to hear a Rule 35 motion for reduction of sentence after a convicted criminal defendant has dismissed his own appeal. FSM v. Akapito, 11 FSM R. 194, 196 (Chk. 2002).

When the relevant portion of FSM Criminal Procedure Rule 35(b) is identical to the United States Federal Rule of Criminal Procedure 35(b) that was in effect until November 1, 1987, and is derived from that source, the standard applied by U.S. federal courts exercising their discretion in Rule 35(b) requests is thus persuasive. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A reduction of sentence may be granted if the court decides that the sentence unduly severe. The court may reduce the sentence simply because it has changed its mind, but usually will not do so where nothing is shown to justify a reduced sentence that was not already considered by the court when the

original sentence was fixed. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A court may reconsider a sentence in light of further information presented to it in the interim between the imposition of sentence and the motion to reduce the sentence. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

On an application for reduction of sentence, the applicant's commendable prison department is only some evidence on the issue to be resolved, neither to be disregarded nor overestimated. Also, hardship on the applicant's family may justify a sentence reduction. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

A motion for reduction of sentence will be denied when the original sentence was not unduly severe, when no reason appeared for the court to change its mind, and when nothing is presented now that was not already considered at the time the sentence was imposed. FSM v. Akapito, 11 FSM R. 298, 300 (Chk. 2002).

Criminal Rule 35(b) provides for judicial discretion to reduce a sentence upon a timely motion. However, any change in the original sentence will not be lightly won by a convicted party because a court should not change a sentence when nothing is shown to justify a reduced sentence that was not already considered by the court when the original sentence was fixed. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion for reduction of sentence will be denied when the original sentence was not unduly severe, when no reason appeared for the court to change its mind, and when nothing is presented that was not already considered at the time the sentence was imposed. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion to reduce a sentence will be denied when the defendant was sentenced to incarceration for six years, four years less than the maximum sentence, and was, on its face, not unduly severe for the crime of manslaughter and when the mitigating factors were all considered in his original sentence. Chuuk v. Inos, 15 FSM R. 259, 261 (Chk. S. Ct. Tr. 2007).

A motion for reduction of sentence will be denied for lack of jurisdiction when a notice of appeal has been filed and the motion was not timely filed within 120 days of the entry of conviction. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

Since 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. Thus, the trial court has no jurisdiction to rule on a motion for reduction of sentence after an appeal has been filed. Chuuk v. William, 16 FSM R. 149, 152 (Chk. S. Ct. Tr. 2008).

The standard applied by U.S. federal courts exercising their discretion in Rule 35(b) requests is persuasive. Chuuk v. William, 16 FSM R. 149, 152 n.1 (Chk. S. Ct. Tr. 2008).

Since the rules permit the court to reduce a sentence within 120 days after the sentence has been imposed, the court is without jurisdiction to rule on a motion to reduce sentence when it is filed more than 120 days from the date that the orders of conviction were entered. Chuuk v. William, 16 FSM R. 149, 153 (Chk. S. Ct. Tr. 2008).

The court may, within 120 days after the sentence is imposed, reduce a sentence if it has changed its mind on the terms of the sentence, but this is rarely done in the absence of justification for reducing the sentence that was not already considered by the court during the initial sentencing. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

A motion for reduction of sentence is essentially a plea for leniency, and is addressed to the sound discretion of the trial court. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

In the absence of FSM precedent, the FSM Supreme Court may consider the reasoning from the courts of other common law jurisdictions. FSM v. Marehalau, 16 FSM R. 505, 507 (Pon. 2009).

A sentence will not be reduced from imprisonment in jail to house arrest when the prisoner's doctor does not specifically assert that house arrest is necessary to alleviate any of the prisoner's medical problems and when the common jail conditions of heat in his prison cell, unhealthy food, and noise along with his state of health do not justify modifying the sentence because no showing was made that accommodation for these concerns is unavailable to him and because the court expects that the jail will make reasonable efforts to follow recommendations from the prisoner and/or his treating physician(s) regarding measures that may be taken at the jail to accommodate and alleviate the prisoner's medical conditions while he serves his sentence of imprisonment. FSM v. Marehalau, 16 FSM R. 505, 507-08 (Pon. 2009).

– Service

It is not unreasonable and oppressive to serve witness subpoenas one week before trial. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A subpoena duces tecum is not unreasonable and oppressive when it requires documents that were earlier produced in response to discovery and materials and documents not discoverable under Criminal Rule 16 because it is not a valid objection that documents required by the subpoenas are not discoverable under Rule 16, but any materials already furnished in discovery need not be produced pursuant to the subpoenas. FSM v. Kuranaga, 9 FSM R. 584, 585 (Chk. 2000).

A subpoena will not be quashed for failure to tender a witness's travel costs "allowed by law" when the subpoena was served because, in the absence of a statute or rule setting a figure for the "fee for one day's attendance and the mileage allowed by law," the law does not allow an amount. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

– Sexual Offenses

The constitutional requirement that proof of guilt be established beyond a reasonable doubt provides protection to persons accused of sexual offenses as well as those accused of other crimes. Complaints by women of sexual assault in Micronesia require no more corroboration than those of other witnesses in other serious cases. Buekea v. FSM, 1 FSM R. 487, 492 (App. 1984).

When there is sufficient evidence of other force in the record to support a conviction for forced sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

Forcing the victim into the naahs, holding and disrobing her, and subjecting her to sexual penetration against her will in the presence of others constituted a single contemporaneous series of events, all of which were intended to be, and were, mutually supporting the general plan to subject the victim to group rape. FSM v. Hartman (I), 5 FSM R. 350, 352 (Pon. 1992).

When the state has failed to prove beyond a reasonable doubt that the sexual penetration was made against the complainant's will, the state has not carried its burden of proof and the sexual assault charge must be dismissed. Kosrae v. Jonah, 10 FSM R. 270, 272 (Kos. S. Ct. Tr. 2001).

Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal,

or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Jackson, 12 FSM R. 93, 99 (Kos. S. Ct. Tr. 2003).

When the state did prove beyond a reasonable doubt that the defendant did commit a sexual assault by intentionally subjecting the victim to sexual penetration, by oral intercourse, under conditions in which the defendant knew or should have known that she was mentally or physically incapable of resisting or understanding the nature of his conduct, the defendant is guilty of the offense of sexual assault. Kosrae v. Jackson, 12 FSM R. 93, 100 (Kos. S. Ct. Tr. 2003).

The offense of sexual assault requires proof beyond a reasonable doubt of intentionally subjecting another person to sexual penetration, against the other person's will. Sexual penetration includes the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his fingers to penetrate the victim's vagina, he did cause the penetration of the victim's genital opening with an object: his fingers, and the state has proven beyond a reasonable doubt all of the elements of the criminal offense of sexual assault. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 595-96 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of the penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 596 (Kos. S. Ct. Tr. 2004).

Under Kosrae statute, sexual abuse is intentionally having sexual contact with another person who is less than thirteen years old or causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party. Kosrae v. Kilafwakun, 12 FSM R. 590, 594, 596 (Kos. S. Ct. Tr. 2004).

When the sexual abuse and sexual assault statutes each require proof of a fact which the other offense does not – the offense of sexual assault requires proof of the fact of intercourse, penetration, cunnilingus or fellatio; the offense of sexual abuse requires proof of the victim's age, but does not require proof of the fact of intercourse or penetration since sexual contact through touching is adequate – the court may enter findings and a decision on both offenses without violating double jeopardy protections. Kosrae v. Kilafwakun, 12 FSM R. 590, 594 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his mouth and tongue to fondle and lick the six year old victim's vagina and vaginal area (actions defined as cunnilingus); when it is undisputed that she tried to resist the defendant's actions but he was too strong for her and that she was mentally and physically incapable of resisting or understanding the nature of the defendant's conduct; and when the 44 year old male defendant knew or should have known that she was mentally or physically incapable of resisting or understanding the nature of his conduct, the defendant committed cunnilingus thereby subjecting the victim to sexual penetration, and accordingly, the state proved beyond a reasonable doubt all of the elements of the offense of sexual assault. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant used his mouth and tongue to fondle and lick the victim's vagina and vaginal area, that the victim was a six year old child at the time, and that the defendant did masturbate during the time he was touching the victim, the defendant intentionally had sexual contact with a victim less than thirteen years old and he touched the victim's intimate parts with the intent of

gratifying his own sexual desire. The state thus proved beyond a reasonable doubt all of the elements of the offense of sexual abuse. Kosrae v. Kilafwakun, 12 FSM R. 590, 596 (Kos. S. Ct. Tr. 2004).

Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against that person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

Each instance of sexual penetration may be charged and prosecuted as a separate violation of Kosrae State Code, Section 13.311. Each factually distinguishable act of sexual penetration is subject to prosecution as a separate count, conviction and sentencing when the defendant committed three factually distinguishable acts of sexual penetration upon the same victim and the record reflects that each of the three acts that the defendant's conduct was separate in time and showed the defendant's new intent in his course of conduct. Kosrae v. Kinere, 13 FSM R. 230, 240 (Kos. S. Ct. Tr. 2005).

An argument that multiple acts of sexual penetration committed during a single continuous criminal episode can be subject only to conviction and sentencing on a single count is not supported by public policy. No principle exempts an accused from prosecution for all the offenses that were committed, just because the accused has the opportunity and willingness to multiply those offenses. Such a principle would encourage the more vicious and repeated criminal acts. The State Legislature could not have intended to grant immunity to a criminal who committed one sexual assault upon a minor victim, from prosecution and punishment for further criminal acts committed during the same encounter. When the defendant's conviction and sentencing upon three counts of sexual assault upon the same victim during the same criminal episode were based upon factually distinct acts and offenses, they are not multiple punishments for the same offense. Kosrae v. Kinere, 13 FSM R. 230, 241-42 (Kos. S. Ct. Tr. 2005).

In Kosrae law, sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission. Kinere v. Kosrae, 14 FSM R. 375, 383 n.4 (App. 2006).

When the defendant committed three distinct acts upon the victim and the act of fellatio occurred at a different time and in a different location than did the acts of anal intercourse and the two acts of anal intercourse were separated by an act of battery (a bite) the defendant penetrated the victim's body at least three times and he thus, did not receive multiple punishments for a single offense. On the contrary, he received multiple punishments for multiple offenses. The State was not required to prove that a significant amount of time elapsed between the three acts of penetration. Kinere v. Kosrae, 14 FSM R. 375, 384 (App. 2006).

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).

Under the pleading theory, disturbing the peace is not a lesser included offense of sexual abuse when, as pled, to prove sexual abuse, Kosrae had to prove the genital licking and the fingering and that the victim was under 13 and to prove disturbing the peace, Kosrae had to prove the genital licking and that the victim was unreasonably disturbed or annoyed. Thus, the victim's age and the fingering were facts that Kosrae had to prove to obtain a sexual abuse conviction that it did not have to prove to obtain the disturbing the peace conviction. That the victim was unreasonably disturbed or annoyed was a fact that Kosrae had to prove to obtain the disturbing the peace conviction that it did not have to prove for the sexual abuse conviction. Kosrae did not have to prove that the victim was unreasonably disturbed or annoyed to prove sexual abuse. Thus, the greater offense of sexual abuse could have been committed without committing the lesser offense of disturbing the peace. Benjamin v. Kosrae, 19 FSM R. 201, 209-10 (App. 2013).

"Sexual penetration" is a statutory element of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

To prove sexual assault, the victim's lack of consent is necessarily pled and proven, which would necessarily also require pleading and proving something that would constitute annoyance and disturbance to the victim. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since sexual assault requires intentionally subjecting another person to sexual penetration against the other person's will and assault and battery requires striking, beating, wounding, or otherwise doing bodily harm to another, and since subjecting another person to sexual penetration against the other person's will is one of a number of ways to otherwise do bodily harm to another, assault and battery is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015).

Since disturbing the peace is willfully committing any act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, or which provokes a breach of the peace, and since every sexual assault – every intentional subjecting a person to sexual penetration against that person's will – is also the willful commission of an act which unreasonably annoys or disturbs another so that she is deprived of peace and quiet, disturbing the peace is a lesser included offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 154-55 (App. 2015).

Since the attempt to commit sexual assault merged into the completed sexual assault; since assault is a lesser included offense of assault and battery; and since assault and battery and disturbing the peace are both lesser included offenses of sexual assault, the convictions for all these lesser offenses must be vacated, and since the maximum sentence for sexual assault as a category two felony is five years, the accused's seven-year sentence, and therefore his convictions, for all offenses must be vacated and the case remanded for re-sentencing on, and thus for a conviction to be entered for, only the greater offense of sexual assault. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

– Solicitation

One who suggests to his drinking companions that they obtain additional liquor by taking a bottle from construction laborers in the area, and who then leads his companions in an effort to attack one of the workers, solicits more possibilities than just the taking of a bottle, and is guilty of aiding and abetting the robbery of a watch and money from another construction worker carried out by his companions while the original instigator is still pursuing the first laborer. FSM v. Hadley, 3 FSM R. 281, 284 (Pon. 1987).

A solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

Like aiding and abetting, soliciting and conspiring are all bases for criminal liability for the acts of another found in 11 F.S.M.C. 301(1)(d). FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011).

– Speedy Trial

The Pohnpeian customary practice of quickly resolving conflict resulting from the commission of an act is closely related to, if not the counterpart of the Western concept of a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 450 (Pon. S. Ct. Tr. 1992).

The statute of limitations begins to run from the commission of an offense, or when the crime is complete. Once prosecution has been commenced the statute of limitations period is no longer available to the prosecution who must then face the task of bringing the defendants to a prompt trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 454-55 (Pon. S. Ct. Tr. 1992).

The Pohnpeian concept of justice and Pohnpei Criminal Rule 48 both allow the court to dismiss a criminal case for delay even when the defendant's constitutional right to a speedy trial has not been violated. Pohnpei v. Weilbacher, 5 FSM R. 431, 456 (Pon. S. Ct. Tr. 1992).

When a defendant has already agreed to a trial date that meets the constitutional requirement for a speedy trial, and no reason is offered why that date is no longer constitutionally sound, a later motion for a speedy trial may be denied. FSM v. Wu Ya Si, 6 FSM R. 573, 574 (Pon. 1994).

The time that elapses between the alleged offenses and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated. The Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution. It imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The FSM constitutional right that the defendant in a criminal case has a right to a speedy public trial is traceable to the U.S. Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A four-factor balancing test for determining speedy trial violations: – length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant – is an appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right. It is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

In determining whether to exercise its discretionary power to dismiss under Rule 48(b), the court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. FSM v. Wainit, 12 FSM R. 405, 410 (Chk. 2004).

A four-factor balancing test – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – is used to analyze the meaning of the FSM Constitution's speedy trial right and to determine speedy trial violations; and it is also an appropriate tool to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

To determine whether to exercise its discretionary power to dismiss under Rule 48(b), a court may consider the same factors relevant to a constitutional decision regarding denial of a speedy trial. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. FSM v. Kansou, 14 FSM R. 497, 499 (Chk. 2006).

Four factors – 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant – are balanced when analyzing the FSM Constitution's speedy trial right and to determine speedy trial violations; and they are also used to analyze whether a Rule 48(b) dismissal for unnecessary delay in prosecution is warranted. The court will also use the same four-factor balancing test to determine whether dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). FSM v. Kansou, 15 FSM R. 180, 183 (Chk. 2007).

A lengthy delay is a triggering mechanism to determine if further analysis is required to determine if a defendant's right to a speedy trial has been violated. If the delay has not been so lengthy as to be presumptively prejudicial, no further analysis is needed. FSM v. Kansou, 15 FSM R. 180, 183 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. FSM v. Kansou, 15 FSM R. 180, 185 n.1 (Chk. 2007).

A defendant may waive his right to a speedy trial. He effects a waiver, in respect of a particular delay, when he requests it, consents to it, enters a plea of guilty, makes certain dilatory pleas or motions, or when the delay is otherwise attributable to the defendant. FSM v. Kansou, 15 FSM R. 180, 185 (Chk. 2007).

A defendant remains free to move for a severance at any time during which his speedy trial clock has not begun to run because a codefendant has not been apprehended. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution is: 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant. The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. A delay of one year is presumptively prejudicial and triggers application of the three remaining factors. Chuuk v. William, 15 FSM R. 381, 386 (Chk. S. Ct. Tr. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. Chuuk v. William, 15 FSM R. 381, 387 n.1 (Chk. S. Ct. Tr. 2007).

Under Kosrae Criminal Procedure Rule 48(b), the Kosrae State Court may dismiss a case if there is unnecessary delay in filing an information or if there is unnecessary delay in going to trial. Under this rule, either delay may violate a defendant's right to a speedy trial and to due process. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

The factors for determining speedy trial violations are: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Kosrae v. Langu, 15 FSM R. 601, 603 (Kos. S. Ct. Tr. 2008).

The right to a speedy trial primarily protects a criminal defendant from hardship due to restraints of liberty before trial. There may also be some anxiety and the recognized risk that the memories of witnesses and the defendant will suffer. The prosecution and public are harmed by delays, too. Witnesses' loss of memory makes them vulnerable on cross-examination. And, imposing criminal sanctions in a prompt, clear manner is more likely to deter future criminal conduct. These factors are important to the fair and prompt administration of justice in all circumstances, even when the prosecution and defense agree to a continuance. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

An accused has the constitutional right to a speedy trial. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Rule 48(b) embraces the court's inherent power to dismiss for want of prosecution. It is not limited to those situations in which the defendant's constitutional speedy trial right has been violated because it imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The four-factor balancing test for determining speedy trial violations is: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right; and 4) prejudice to the defendant, and it is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

Dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute an action, for a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

When the four speedy trial factors, on balance, show that the defendant has suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because an excessive length of time that has passed coupled with the absolute lack of diligence on the prosecution's part are sufficient to assume prejudice; when the delays were a direct result of the state failing to diligently prosecute the case, the case will be dismissed. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

The four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

A four-factor balancing test for determining speedy trial violations: 1) length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, and 4) prejudice to the defendant, is also an appropriate tool to use in analyzing a Rule 48(b) dismissal. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

The Chuuk State Supreme Court has the authority to dismiss a case sua sponte. This is a necessary corollary of the judge's authority to process criminal cases. Cases that have remained dormant due to inaction and that meet the standard for dismissal, may be dismissed. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the record demonstrates that neither the court nor the defendant were the cause for the delay, the state's premise that the case has been waiting scheduling is flawed. If the court were to adopt such an approach, as long as the court schedules trials and other hearings, the state or the court would be free to subsequently delay a trial as long as it wished for any reason, but common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a

defendant to trial. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The case will be dismissed without prejudice for lack of prosecution when, taking a look at the state's processing of the case before the dismissal, the four speedy trial factors, on balance, show that the defendant suffered a violation of his right to a speedy trial because the record does not support any legitimate reasons for the delay, because the record does show that the delays were a direct result of the state failing to diligently prosecute the case, and because the excessive length of time that has passed coupled with the absolute lack of diligence on the state's part are sufficient to assume prejudice. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

The FSM Constitution guarantees a criminal defendant the right to a speedy public trial. FSM v. Ezra, 19 FSM R. 497, 505 (Pon. 2014).

An appropriate tool to analyze the meaning of the FSM Constitution's speedy trial right is a four-factor balancing test for determining speedy trial violations: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. FSM v. Ezra, 19 FSM R. 497, 505-06 (Pon. 2014).

Rule 48(b) is the mechanism by which a defendant may assert his constitutional right to a speedy trial, although it also embraces the court's inherent power to dismiss for want of prosecution. The court's power to dismiss under Rule 48(b) is not limited to those situations in which the defendant's constitutional speedy trial right has been violated since the Rule is a restatement of the court's inherent power to dismiss a case for want of prosecution and it imposes a stricter standard of tolerable delay than does the Constitution. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The court will use the same four-factor balancing test to determine whether dismissal is appropriate under 12 F.S.M.C. 802 since that statutory right is embodied in Rule 48(b). Accordingly, a case may be dismissed by the court if there is unnecessary delay in bringing the accused to trial. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The four-factor balancing test applicable for cases implicating a defendant's right to a speedy trial or a Chuuk Criminal Rule 48(b) dismissal for unnecessary delay in prosecution include: 1) length of delay, 2) the reason for the delay, 3) the defendant's assertion of his right, and 4) prejudice to the defendant. The first factor, whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

– Speedy Trial – Assertion of Right

Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. FSM v. Kansou, 15 FSM R. 180, 185 (Chk. 2007).

For speedy trial or unnecessary delay purposes, a defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. Chuuk v. William, 15 FSM R. 381, 388-89 (Chk. S. Ct. Tr. 2007).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, while a failure to assert the right will make it difficult for him to prove that he was denied it. But since non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

A defendant's failure to demand a speedy trial will weigh in favor of the prosecution. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor while a failure to assert the right will make it difficult for him to prove that he was denied it, but non-assertion of the right does not constitute waiver of the speedy trial right. A court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

When a defendant failed to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, this factor will weigh in the prosecution's favor. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

For speedy trial or unnecessary delay purposes, the defendant's demand for a prompt trial will always weigh heavily in his favor, and a failure to assert the right will make it difficult for him to prove that he was denied it, and while non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

A defendant's failure to object to any delay either on the basis that it was unnecessary or that it violated the defendant's right to a speedy trial, will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 47-48 (Chk. S. Ct. Tr. 2013).

A defendant may waive his right to a speedy trial. He effects a waiver when he requests it, consents to it, enters a plea of guilty or when the delay is otherwise attributable to the defendant. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

Although non-assertion of the right does not constitute waiver of the speedy trial right, a court can consider whether the right was asserted, and how vigorously, in determining the reasonableness of any delay. When the defendants have raised the right and cannot be considered to be sleeping on the right, but some delay is being caused collectively by the defendants' pretrial actions, and motions, this delay is an implicit acquiescence and necessary part of any criminal action. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

– Speedy Trial – Length of Delay

When only ten months have passed since the defendant was charged with twelve counts and about 8½ months since his initial appearance – not enough time has elapsed for speedy trial concerns to be implicated in a complex case, especially when trial seems imminent. FSM v. Wainit, 11 FSM R. 186, 191 (Chk. 2002).

A longer delay is tolerable for a complex conspiracy, than for an ordinary crime. FSM v. Kansou, 15 FSM R. 180, 184 (Chk. 2007).

Ten months' delay is in excess of what the Kosrae State Court would normally accept as reasonable or necessary for beginning the prosecution of misdemeanors allegedly committed in the presence of officers. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

The less than four months between the information's filing and the accused's motion to dismiss is simply insufficient to trigger any presumption of a violation of the accused's speedy trial right. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

Whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors, those factors will be considered when the case has been pending since November 2007. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When fifty-five months elapsed between the filing of the action and the order for dismissal and in that time, the prosecution failed to file anything to move the case forward and when the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list, the appearance docket reveals scant effort to prosecute the case. The primary responsibility for prosecuting a case lies with the plaintiff. When a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity, will eventually erode the defendant's ability to prepare a defense. Chuuk v. Chopwa, 19 FSM R. 28, 32-33 (Chk. S. Ct. Tr. 2013).

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Brief periods of inactivity in an otherwise active prosecution are acceptable. Chuuk v. Noboru, 19 FSM R. 38, 43 (Chk. S. Ct. Tr. 2013).

Only rarely would the prosecution's failure to file anything for several years be appropriate. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

Whether there has been a lengthy delay, is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors when the case has been pending since September 2, 2003, the remaining factors are triggered. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Whether there has been a lengthy delay is a triggering mechanism for further analysis to determine if a defendant's right to a speedy trial has been violated. Since a delay of one year is presumptively prejudicial and triggers application of the three remaining factors when the case has been pending since May 19, 2008, the remaining factors are triggered. Chuuk v. Haruo, 19 FSM R. 43, 46 (Chk. S. Ct. Tr. 2013).

When it can reasonably be inferred from the lack of activity on the record that the state had been deliberately proceeding in dilatory fashion, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket." Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The time that elapses between the alleged offenses and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The statute of limitations is not the same as the right to a speedy trial, but it is a referent as to whether the case should be dismissed under the more exacting standard of unnecessary delay found in 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

A single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the criminal information was re-filed against the defendant a little over six months after the alleged incident and when the defendant has been charged with felonious crimes, not misdemeanors, it cannot be viewed as a lengthy delay that would trigger further analysis and consideration of the remaining three speedy trial factors. Chuuk v. Kapwich, 19 FSM R. 548, 550 (Chk. S. Ct. Tr. 2014).

– Speedy Trial – Prejudice to Accused

Prejudice to an accused from delay may consist of: 1) oppressive pretrial incarceration; 2) the

accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility an accused's inability to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

A defendant's general statement that witnesses' memories may be impaired from the delay, does not show prejudice. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

When delay is justified by a legitimate reason, such as complexity, a speedy trial claim will fail absent a demonstration of actual prejudice. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

Prejudice is not shown when the defendant does not state that his, or any particular one of his, witnesses 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. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

The failure of a prosecution witness's memory does not support a speedy trial violation claim. FSM v. Kansou, 15 FSM R. 180, 188-89 (Chk. 2007).

When it was less than three years after the accused was charged that he was arrested in the U.S. on an FSM extradition warrant and during that whole time he was residing, working, and paying taxes in the United States or its territory and he neither resided nor worked in the accusing jurisdiction (the FSM) and had no reasonably determinable place of abode or work within the jurisdiction of the FSM after 1999 at anytime after he was charged in November, 2003 and when the claimed prejudice resulting from his alleged 1999 involvement in the charged conspiracy and his 2006 arrest was the deaths of two mayors of municipalities in Faichuk, who are alleged to be possible witnesses, but how they would have assisted the accused's defense, who was responsible only for the Northern Namoneas, is left unsaid, his motion to dismiss for unnecessary delay based on the FSM's alleged negligence in arresting him will be denied. FSM v. Kansou, 15 FSM R. 373, 378-79 (Chk. 2007).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. William, 15 FSM R. 381, 389 (Chk. S. Ct. Tr. 2007).

Since the mere erosion of memory through the passage of time is not sufficient for a showing of prejudice, any claim of failing memory must be supported by a specific showing of which memories were affected and how any memory problem affects the defense. When the only witness a defendant addresses in his motion is himself and, assuming he testifies at his trial, he has not asserted that his memory is impaired other than by the passage of time, or what he would be able to testify if his memory were not impaired, his vague assertions of memory impairment alone do not constitute a showing of prejudice from the delay and this factor, therefore, favors the government. Chuuk v. William, 15 FSM R. 381, 389 (Chk. S. Ct. Tr. 2007).

When, although the delay of over three years was presumptively prejudicial, such presumptive prejudice alone is not determinative of the speedy trial analysis, but must be considered in the context of the other factors and when delay is justified by legitimate reasons, a speedy trial claim will fail absent a demonstration of actual prejudice. Thus, when the delays were not the result of any deliberate or negligent act of the government since it was due to necessary changes in counsel and judges, defendants' pre-trial motions, scheduling difficulties, and other reasons unrelated to the diligence of the government's prosecution, and since the accused only now raises his right to a speedy trial, and he has not shown any prejudice from the delay, he did not suffer a constitutional speedy trial violation. Chuuk v. William, 15 FSM R. 381, 390 (Chk. S. Ct. Tr. 2007).

When it was the prosecution's witnesses who were either unavailable or whose memory failed, the defendants were not prejudiced and may even have benefitted from the delay. When the defendants do not state that any particular defense witness now had an impaired memory or was no longer available, or what that witness would have testified to if his or her memory were not impaired, this does not show prejudice. The failure of a prosecution witness's memory does not support a dismissal for unnecessary delay claim. FSM v. Kansou, 15 FSM R. 481, 482 (Chk. 2008).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of the State of Chuuk and when this restriction of movement will be analogous to an incarceration within the state since FSM citizens are afforded a constitutional right to travel, it will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Chopwa, 19 FSM R. 28, 32 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system, and pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of Chuuk and when this restriction of movement will be analogous to an incarceration within the State since FSM citizens are afforded a constitutional right to travel, it will weigh in favor of a pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

A case left to languish in the system, with little to no activity will eventually erode the defendant's ability to prepare a defense. Chuuk v. Noboru, 19 FSM R. 38, 42 (Chk. S. Ct. Tr. 2013).

The court is not merely interested in "cleaning house" and dismissal is appropriate when the defendant would suffer a demonstrable prejudice or threat of prejudice from the excessive delay in the prosecution's bringing this case to trial because the case has been pending for over nine years and contains a stipulated dismissal from 2003, signed by both parties, which demonstrates the prosecution's desire to abandon the case rather than continue to prosecute, and because the prosecution has taken no action in the case since the stipulated motion's filing. Chuuk v. Noboru, 19 FSM R. 38, 42-43 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility that an accused may not be able to adequately prepare his defense skews the fairness of the entire system, and pretrial anxiety is the least significant factor, and, because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

When the pre-trial release conditions imposed on the defendant restrict his ability to travel outside of Chuuk and when the defendant was also required to submit his passport, this restriction of the defendant's ability to freely move will count as an incarceration of sorts and will weigh in favor of the pretrial incarceration, though much less than actual oppressive incarceration. Chuuk v. Haruo, 19 FSM R. 43, 48

(Chk. S. Ct. Tr. 2013).

When pretrial anxiety of insurmountable or extraordinary measures has not been demonstrated, it will weigh in the prosecution's favor. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

Prejudice to an accused may consist of: 1) oppressive pretrial incarceration; 2) the accused's pretrial anxiety; and 3) impairment of the defense. Of these, the most serious is the last because the possibility an accused's inability to adequately prepare his defense skews the fairness of the entire system. Pretrial anxiety is the least significant factor and because a certain amount of pretrial anxiety naturally exists, the accused must demonstrate that he suffered extraordinary or unusual pretrial anxiety as a result of the delay. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the pretrial release restrictions placed on the defendants are not onerous and do not rise to the level of oppressive and when the anxiety caused by delay in confronting trespass charges is not extraordinary, the prejudice as a result of the delay is minimal and will not impact the fairness of the trial procedure, the quality of the evidence, or jeopardize any other due processes right of the defendants. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

– Speedy Trial – Reason for Delay

Under the Pohnpei Constitution an accused's right to a speedy trial is not violated if the delay was necessary to afford the accused the opportunity (if he chooses to exercise the customary practice) of pacifying hostilities arising from the criminal conduct between the defendant and his victims; or if the delay was necessary for the prosecutor to prepare for trial, given the complexity and other circumstances of the case; or if the delay was the result of certain excusable neglect by any agency involved in the criminal process. It is a violation of an accused's right to a speedy trial if the delay was employed by the prosecution to subject the accused to undue oppression. Pohnpei v. Weilbacher, 5 FSM R. 431, 450-51 (Pon. S. Ct. Tr. 1992).

A delay in bringing to trial caused by a "subsisting agreement" between the government and the Public Defender's Office that was not clear as to how service of the criminal process was to be effected on defendants was excusable neglect and thus not a violation of the right to a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 455 (Pon. S. Ct. Tr. 1992).

No trial can be held while an appellate division-ordered stay is in effect, nor until after a defendant's motions to disqualify the prosecutors and to dismiss the case are decided. FSM v. Wainit, 12 FSM R. 405, 411 (Chk. 2004).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over, even when that delay is justified. FSM v. Wainit, 12 FSM R. 405, 411 (Chk. 2004).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the defendant's excused absences and the time to rule on his pretrial motions. FSM v. Wainit, 12 FSM R. 405, 411-12 (Chk. 2004).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct whether or not those delays were justified. FSM v. Wainit, 12 FSM R. 405, 412 (Chk. 2004).

Since no trial can be held until after a defendant's motions to disqualify the prosecutors or to dismiss the case are decided, such motions are delays caused or requested by a defendant. Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right until that delay is over, even when that delay is justified. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the time to rule on a defendant's pretrial motions. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

A defendant's consent to a trial date that may be, or is, beyond the time when a trial would have to be held under the defendant's speedy trial right, constitutes the defendant's waiver of his right to a speedy trial. An express waiver of an accused's speedy trial right is not required if defense counsel agrees to a trial date beyond the speedy trial limit. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

For speedy trial or unnecessary delay purposes, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. The delay caused by a defendant's requests, although justified since the court granted relief based on his motions, thus cannot be used by the defendant to seek a dismissal on the ground that his speedy trial right was violated or that there has been unnecessary delay in bringing him to trial. FSM v. Kansou, 14 FSM R. 497, 500 (Chk. 2006).

The court can disregard the delay during the 2005 discovery when the defendant's first assertion of his speedy trial right was not until he filed a motion to dismiss on that ground on November 6, 2006, since he had already waived any claim based on that right by consenting to the March 13, 2006 trial date. A defendant's consent to a trial date that may, or is, beyond the time when a trial would have to be held under the defendant's speedy trial right, constitutes the defendant's waiver of his right to a speedy trial. Since an express waiver of an accused's speedy trial right is not required if defense counsel agrees to a trial date beyond the speedy trial limit, the defendant thus waived any speedy trial claim for the delay before the March 13, 2006 trial date when his attorney consented to that trial date. FSM v. Kansou, 15 FSM R. 180, 185-86 (Chk. 2007).

Delay caused or requested by a defendant suspends his speedy trial right, or is considered his waiver of that right, until that delay is over, even when that delay is justified. The movant's speedy trial right was thus suspended or waived by his successful (and justified) motion to disqualify the FSM Department of Justice. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

When a defendant raises an issue before trial which makes the original trial date impractical, the reasonable period of delay caused thereby is attributable to the defendant. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

A defendant is free to take whatever actions he feels are necessary to protect his rights prior to trial. He may not, however, use the delaying consequences of those actions as a basis for claiming that his trial was improperly delayed. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

Delay caused by a defendant's successful motion to disqualify the FSM Department of Justice is attributable to him, if not wholly, at least in large part, and delay caused by his successful motion to disqualify the judge is also attributable to him. FSM v. Kansou, 15 FSM R. 180, 186 (Chk. 2007).

Although judicial economy considerations cannot be elevated to where they impair a defendant's constitutional rights, they are relevant. FSM v. Kansou, 15 FSM R. 180, 187 n.3 (Chk. 2007).

When co-defendants are charged together and will be tried together, any delay attributed to one co-defendant is attributed to all of them. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

Delay due to a co-defendant's unavailability is not attributed to the government, and this includes the time a co-defendant was a fugitive. FSM v. Kansou, 15 FSM R. 180, 187 (Chk. 2007).

A single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. No other rule is practical. If every co-defendant had a different "clock," the advantages of a joint trial would be destroyed and multiple trials, with all their disadvantages, would have to be held in sequence. FSM v. Kansou, 15 FSM R. 180, 187-88

& n.5 (Chk. 2007).

When the movant's case has never been severed from his co-defendant's and the movant never sought a severance, the speedy trial "clock" therefore did not start to run until December 11, 2006, when the co-defendant made his initial appearance. FSM v. Kansou, 15 FSM R. 180, 188 (Chk. 2007).

Co-defendants share the same speedy trial "clock" and any delay attributable to one joined co-defendant is attributable to all joined co-defendants. Thus the delay that the court has already attributed to the other joined co-defendants, is also attributed to a co-defendant. FSM v. Kansou, 15 FSM R. 373, 379 (Chk. 2007).

It is the prosecution's burden to take the necessary steps to bring a criminal matter to trial, but, a defendant cannot take advantage of delays caused by his own conduct or consent, whether or not those delays were justified. Any delay resulting from a defendant's difficulty in obtaining counsel and adequately preparing a defense should not be attributed to the prosecution, and a defendant may waive his right to a speedy trial. He effects a waiver, in respect of a particular delay, when he requests it, consents to it, enters a plea of guilty, makes certain dilatory pleas or motions, or when the delay is otherwise attributable to the defendant. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

Delay caused by pre-trial motions, including a successful motion to disqualify a judge or government prosecutor, is attributable to the defense and is a waiver of the speedy trial right until that delay is over even if the delay is justified. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

Delays on one defendant's part are not attributable to the government and the government is not required to request severance when one defendant causes delay in the prosecution of a co-defendant. Rather, a single speedy trial "clock" governs in cases with multiple defendants. The "clock" starts to run with the most recently added defendant and any delay attributable to any one defendant is charged against the single clock, thus making the delay applicable to all defendants. No other rule is practical. If every co-defendant had a different "clock," the advantages of a joint trial would be destroyed and multiple trials, with all their disadvantages, would have to be held in sequence. A defendant is free to seek severance himself when a co-defendant causes delay in the ticking of the speedy trial "clock." Chuuk v. William, 15 FSM R. 381, 387 n.2 (Chk. S. Ct. Tr. 2007).

Assuming the government is to blame for the delay, the weight to be given to the government's reason for delay depends upon what that reason is. If delay is due to a government effort to impede the defense, then, of course it will weigh heavily against the government. If the reason is neutral, such as crowded courts, it will still go against the government, but less heavily. Chuuk v. William, 15 FSM R. 381, 387 (Chk. S. Ct. Tr. 2007).

A valid reason justifies appropriate delay. If the court should find that the prosecution was conducted with such disregard of the appellant's interests that it can be said that the delay resulted from the prosecutor's deliberate, or at least negligent, actions and the prosecutor fails to show that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay, then the accused's speedy trial rights have been denied and the convictions must be vacated and the indictments dismissed, but if the court finds that all the delay attributable to the prosecutor was necessary for fair and just prosecution of the charge, then the conviction will stand. Chuuk v. William, 15 FSM R. 381, 388 (Chk. S. Ct. Tr. 2007).

When much of the delay, such as that resulting from the defendants' difficulties in obtaining and retaining counsel, timely appearing for scheduled court dates, and their pre-trial motions, is attributable to the defendants and any objection to the delay was waived; when other delays attributable to the death of the presiding judge, judge recusal for conflict of interest, and judge reassignment do not weigh heavily against the government as the delays were due either to neutral factors or the court's extraordinary circumstances (although these "neutral" delays are attributable to the government); but when none of the delay was the result of the government's deliberate or negligent action and the government was prepared to

present its case in October of 2004 before defense counsel's departure for medical treatment lead to a continuance, the third factor favors a finding that there was no constitutional speedy trial violation. Chuuk v. William, 15 FSM R. 381, 388 (Chk. S. Ct. Tr. 2007).

A valid reason should serve to justify appropriate delay. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When the prosecution states that the court is to blame for the delay and that the case has been waiting scheduling and when, assuming that this assertion is correct and that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

When the record demonstrates that neither the court nor the defendant were the cause for the delay and when the prosecution has provided no supporting evidence for the proposition that the court was to blame for the delay, the prosecution simply failed to move the case forward. This is not a demonstration of good cause as required. Otherwise, as long as the court schedules trials and other hearings, the prosecution and/or the court would be free to subsequently delay a trial as long as they wished for any reason. Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Chopwa, 19 FSM R. 28, 31 (Chk. S. Ct. Tr. 2013).

The dismissal of a 2007 case is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Chopwa, 19 FSM R. 28, 31-32 (Chk. S. Ct. Tr. 2013).

The better procedure is for the prosecution to insist on its need to have its day in court by filing a motion for reassignment, requesting a status conference, or scheduling of the case before a dismissal. Something more than nothing would be a necessary action to avoid dismissal. Chuuk v. Chopwa, 19 FSM R. 28, 33 (Chk. S. Ct. Tr. 2013).

A valid reason should serve to justify appropriate delay. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Assuming that the sole reason for the delay was a result of the crowded courts, such will still go against the government, but less heavily. But when the record demonstrates that the prosecution requested a dismissal, the premise of the prosecution's argument—that the case has been waiting scheduling—is flawed. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

Common sense dictates that the reason or reasons for all trial delays must have the requisite good cause existing for the delay in ultimately bringing a defendant to trial. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

When the prosecution simply failed to move the case forward, a dismissal is more than a mere attempt to enforce a scheduling order or to "clean up the docket" when it can reasonably be inferred from the lack of activity on the record that the prosecution had been deliberately proceeding in dilatory fashion. Chuuk v. Noboru, 19 FSM R. 38, 41 (Chk. S. Ct. Tr. 2013).

A valid reason should serve to justify appropriate delay. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

The state's response is void of any demonstration of good cause as to why it has failed to prosecute the case when, rather than demonstrating a valid reason, it asks the court for permission to set trial; when the state does state that the court is to blame for the delay and that the case has been waiting scheduling and that due to the severity of the crime, it should not be dismissed; and when, assuming that the sole reason for

the forty-nine month delay was a result of the crowded courts, such will still go against the government, but less heavily. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the state offers no reason for its failure to comply with the defendant's constitutional right to a speedy trial; when it was only after the court issued a notice that the state requested leave to begin trial; when the state's failure to make the request on its own, further demonstrates a lack of diligence in prosecuting this case; and when, on three separate occasions, the prosecutor neglected to attend the trials, dismissal without prejudice is a relatively lenient penalty for the state's utter failure to prosecute the case since a dismissal without prejudice does not, in theory, irrevocably deprive the state of its day in court. Chuuk v. Haruo, 19 FSM R. 43, 47 (Chk. S. Ct. Tr. 2013).

When the defendant requested discovery on June 23, 2008, and the request was never answered and when forty-nine months elapsed between the filing of the action and the order for dismissal, the case languished in the courts for several years with the inactivity prompting the court to place it on the dismissal list because the appearance docket revealed scant effort by the state's counsel to prosecute this case. Since the primary responsibility for prosecuting a case lies with the state, when a case has not been prosecuted in a diligent manner, prejudice is generally presumed because a case left to languish in the system, with little to no activity will eventually erode the defendant's ability to prepare a defense, particularly if the defendant's request for discovery, which does not require any action by the court, is never answered. Chuuk v. Haruo, 19 FSM R. 43, 48 (Chk. S. Ct. Tr. 2013).

An accused is not denied a speedy trial when the delay is clearly attributable to the accused himself or to his counsel. Such delay includes the defendant's excused absences and the time to rule on his pretrial motions. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

Delay caused or requested by the defendant suspends his right to a speedy trial, or is considered his waiver of that right, until after that delay is over, even if the delay is justified. Such delay includes the time to rule on a defendant's pretrial motions. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When delay is justified by a legitimate reason, such as complexity, a speedy trial claim will fail absent a demonstration of actual prejudice. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When a defendant's attorney had to file multiple enlargements due to the fact that he could not contact his client, this delay is attributable to the defendant's own actions and is applicable to all co-defendants in a joint trial. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When the delay is reasonably attributed to the complexity and unusual character of a case of first impression, to the appointment of counsel, to the defendants' own actions, and to a non-intentional change in the lead investigator, no unnecessary delay has shown on the prosecution's part, nor any intent to prejudice the defendants thereby. FSM v. Ezra, 19 FSM R. 497, 507 (Pon. 2014).

When, due to the complexity of jurisdictional questions of first impression, combined with coordinating the activity of all four defendants, and to the lead investigator's death, no intentional delay can be attributed to the prosecution, the defendants' right to a speedy trial has not been violated under the Constitution, nor has it been violated under the more exacting standard of "unnecessary delay" under 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 508 (Pon. 2014).

– Speedy Trial – When Right Attaches

The right to a speedy public and impartial trial attaches either when an information or complaint has been filed with the court and service of that information or complaint has been effected upon the one named as the accused; or when an accused has been arrested by means of an arrest warrant or other process issued by a judicial officer. "Other process" includes summons, writ, warrant, mandate or other process issuing from or by the authority of the court to have the defendant named therein appear before it at the appointed time. It does not refer to a warrantless arrest. Pohnpei v. Weilbacher, 5 FSM R. 431, 451-53

(Pon. S. Ct. Tr. 1992).

An accused's speedy trial right attaches once he or she is accused — that is, when the criminal information charging the accused with a crime has been filed. The time that elapses between the alleged crimes and the filing of charges is not to be considered when determining whether a defendant has been denied a speedy trial. FSM v. Kool, 18 FSM R. 291, 295 (Chk. 2012).

The right to a speedy trial does not attach until the information, or other process is issued. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

– Standard of Proof

All elements of a crime need not themselves be criminal in order for the combination of those elements to be criminal. FSM v. Boaz (II), 1 FSM R. 28, 33 (Pon. 1981).

The Constitution's Due Process Clause requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Unsubstantiated speculations raised after trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM R. 209, 225-27 (App. 1982).

The government's burden in criminal prosecutions is to show guilt beyond a reasonable doubt. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

The constitutional requirement that proof of guilt be established beyond a reasonable doubt provides protection to persons accused of sexual offenses as well as those accused of other crimes. Complaints by women of sexual assault in Micronesia require no more corroboration than those of other witnesses in other serious cases. Buekea v. FSM, 1 FSM R. 487, 492 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

Statutes which provide a defense in the form of exceptions to a general proscription do not reduce or remove the government's traditional burden of proving beyond a reasonable doubt every fact necessary to constitute the offense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The government ultimately bears the burden of disproving the applicability of a statutory exception when it is properly presented as a defense. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

Each item of evidence is merely a building block. The standard of proof beyond a reasonable doubt is not applied to any specific item of evidence to determine admissibility but to all of the evidence collectively to determine whether all elements of the crime have been established beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Mental condition defense established by 11 F.S.M.C. 302(1), and other affirmative defenses, do not lift from government the burden of establishing all essential elements of the crime beyond a reasonable doubt. Runmar v. FSM, 3 FSM R. 308, 312 (App. 1988).

In order for trier of fact to be free to choose between the lesser offense, manslaughter, or a greater degree of homicide, there must be a factual element, the resolution of which will determine whether the greater or lesser offense is applicable. Runmar v. FSM, 3 FSM R. 308, 318 (App. 1988).

The burden of proof beyond a reasonable doubt is on the government as to all essential elements of a crime charged. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Where two government witnesses testified that they knew the defendant and the witnesses were policemen who participated in the search of the defendant's property in the defendant's presence, the trial court was justified in reaching the finding, beyond a reasonable doubt, that the defendant was the one who committed the crime even though there was no in-court identification or description of the defendant. Kallop v. FSM, 4 FSM R. 170, 176 (App. 1989).

In a murder case, the defendant's voluntary admissions, including an express statement to his mother that he had committed the crime and asking others if the victim had been killed at a time before the body had been found, corroborated by finding the body slain in a manner consistent with the defendant's statement, constitute evidence sufficient to permit a reasonable trier of fact to find beyond a reasonable doubt that the defendant in fact killed the victim. Kimoul v. FSM, 5 FSM R. 53, 58 (App. 1991).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

A variance – a discrepancy or disagreement between allegations of the charging instrument and the proof adduced at trial – will be tolerated as long as it is not material to the basic elements of the crime charged. Otto v. Kosrae, 5 FSM R. 218, 221-22 (App. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Where evidence offered at trial showed the defendant was hitting vehicle and that there was damage to vehicle and that defendant was at and participated in illegal roadblock the trial court, acting reasonably, could be convinced beyond a reasonable doubt of the defendant's guilt. Otto v. Kosrae, 5 FSM R. 218, 223 (App. 1991).

Proof beyond a reasonable doubt is not established in a case in which only one witness testifies as to the presence of an element of the crime (live birth) and he expresses assumptions and has difficulty in being exact or sure, and states that the infant was either born alive or its heart was beating. Welson v. FSM, 5 FSM R. 281, 285-87 (App. 1992).

In a case in which the existence of an element of the crime (live birth) was not established because of the uncertainty of the evidence on this point, and in which a review of all the evidence yields the possibility that the infant was dead at the time the defendant disposed of the body, a reasonable doubt would exist in the mind of the trier of fact as to the element of live birth. Welson v. FSM, 5 FSM R. 281, 287 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

When there are verdicts that are inconsistent to such an extent that an essential element cannot be

proven beyond a reasonable doubt a resulting conviction is reversible error. Thus when someone is convicted of a charge for which an essential element is being aided and abetted by another and that other is acquitted of being an aider and abettor the conviction is reversible error for failure of proof beyond a reasonable doubt of the essential element of being aided and abetted. Hartman v. FSM, 6 FSM R. 293, 300-01 (App. 1993).

The government has the burden of proof in criminal cases, and must prove each element of the crimes charged beyond a reasonable doubt. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

The burden was on the government to establish beyond a reasonable doubt that defendants' interference with the crops at issue was unlawful; if there was any doubt about defendants' claim of right, defendants should have been acquitted on the malicious mischief charge. Nelson v. Kosrae, 8 FSM R. 397, 406-07 (App. 1998).

Where a person claims to have acted in the lawful exercise of his rights, the burden is on the government to show that his interference with the property was unlawful; if the evidence leaves any room for reasonable doubt as to the accused's claim of right, the accused should be acquitted. Nelson v. Kosrae, 8 FSM R. 397, 407 (App. 1998).

Proof beyond a reasonable doubt is the constitutionally-mandated standard to sustain a criminal defendant's conviction. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

A defendant's intention must be inferred from what he says and what he does. An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

Eyewitness testimony is not necessary to prove each fact or element of a criminal offense. Facts may be shown by circumstantial evidence. Kosrae v. Anton, 12 FSM R. 606, 609 (Kos. S. Ct. Tr. 2004).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. Kosrae v. Anton, 12 FSM R. 606, 609-10 (Kos. S. Ct. Tr. 2004).

When considering whether an allegation of variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. FSM v. Fritz, 13 FSM R. 85, 87 (Chk. 2004).

When the plain meaning of the defendant's letters clearly refers to both the state and national candidates in the March 2, 1999 election, that is sufficient evidence that there was a national election on March 2, 1999. Wainit v. FSM, 15 FSM R. 43, 48-49 (App. 2007).

There was clearly sufficient evidence to support the trial court's findings that the defendant sent his February 19 and 27, 1999 letters in his capacity as a public officer, specifically as the mayor of Udot Municipality, when the letters were signed: "T.C. Wainit, Mayor, Udot Fonuweisom." Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

When there is nothing present in the defendant's letters to suggest that either letter was sent by accident, by an unauthorized person, or was in any way unintentional on the defendant's part, the trial court was correct in its finding that the defendant acted willfully. Wainit v. FSM, 15 FSM R. 43, 49 (App. 2007).

There was sufficient evidence apart from the field sobriety tests to sustain the conviction for driving under the influence because there were testimonies that the defendant appeared drunk and had the smell of alcohol on him, together with the fact that the defendant exhibited these characteristics when he emerged from his vehicle carrying an open can of Budweiser after going through a stop sign and colliding with another vehicle. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

A trier of fact is entitled to rely on properly admitted evidence and reasonable inferences drawn from that evidence. A reasonable inference is that the accused, who smelled of alcohol and had appeared to be intoxicated, would not have emerged from a vehicle immediately after an accident carrying an empty Budweiser can with him when he had this can in hand when he was on the road, which is a public place. Thus there was sufficient evidence to convict the defendant for possessing an open can of alcohol in a public place. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

When a reasonable fact finder could find beyond a reasonable doubt that the defendants employed unreasonable force against the victim when he was no longer a threat to them, evidenced by their use of dangerous weapons against the victim when he no longer had a machete and their simultaneous beating of him when he was no longer offering resistance, the government has presented sufficient evidence that the victim's killing was unlawful. Chuuk v. William, 15 FSM R. 483, 488 (Chk. S. Ct. Tr. 2008).

If a reasonable fact finder could find beyond a reasonable doubt that during the extended period between the victim's initial assault and the defendants' finally relenting from their beating of him, during which the defendants had ample time to observe that the victim was suppliant, injured and helpless, then either the defendants had, in fact, regained their senses or reasonable persons in the defendants' situation would have cooled off and regained their senses. Chuuk v. William, 15 FSM R. 483, 490 (Chk. S. Ct. Tr. 2008).

Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict, and it is well established that the weighing of contradictory evidence is strictly within the trial court's discretion. Engichy v. FSM, 15 FSM R. 546, 559 (App. 2008).

To sustain a conviction, each element of a charge must be proven beyond a reasonable doubt. Chuuk v. Robert, 16 FSM R. 73, 78 (Chk. S. Ct. Tr. 2008).

A variance is a discrepancy or disagreement between the allegations of the charging instrument and the proof adduced at trial. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When considering whether a variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights is disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When the prosecution failed to incorporate the accused's alleged possession of a rifle into its prosecution even after witness testimony, choosing instead to remain within the parameters of its original allegations all the way through closing argument, namely that the accused's presence in the boat alone supported conviction, it is reasonable to conclude that the accused was never given proper notice of his

alleged conduct, and, even if the accused was given notice of the conduct underlying the violation after the witness testimony, such notice coming midway through the FSM's case-in-chief is not sufficient notice for the accused to prepare his defense against the factual allegations ultimately used to convict him. Kasmiro v. FSM, 16 FSM R. 243, 246 (App. 2009).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Kasmiro v. FSM, 16 FSM R. 243, 247 (App. 2009).

Under the permissive inference type of criminal statutory presumptions, the prosecution is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the factfinder is left free to accept or reject the inference. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

A presumption in a criminal statute creates a permissive inference. Because this permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference. This is the manner in which the FSM Supreme Court should and will handle a criminal presumption that is "prima facie evidence." FSM v. Aliven, 16 FSM R. 520, 533-34 (Chk. 2009).

A motion for a pretrial acquittal on conspiracy counts based on the government's failure to prove an agreement will be denied as premature because the existence of such an agreement is subject to proof at trial. Chuuk v. Suzuki, 16 FSM R. 625, 632 (Chk. S. Ct. Tr. 2009).

The government has the burden of proving that an accused's statement is voluntary and thus admissible and must show this by a preponderance of the evidence. FSM v. Ezra, 19 FSM R. 497, 510 (Pon. 2014).

There is a substantial difference between the quantum of proof necessary to constitute sufficient evidence to establish probable cause and that necessary to support a conviction. FSM v. Kimura, 19 FSM R. 630, 636, 638 (Pon. 2015).

When an information's language is more specific than the language of the statute under which the offense is charged, the prosecution must establish those specific facts in addition to a violation of the statute. Lee v. Kosrae, 20 FSM R. 160, 165-66 (App. 2015).

The report of a trained and experienced fisheries observer on the scene and his later deposition testimony is more than sufficient to show probable cause – that it was more likely than not that a violation occurred – when, although the observer never actually saw a crew member throw the trash overboard, the court can infer from the circumstantial evidence that it is more likely than not that that is what occurred. Whether the government will be able to prove that beyond a reasonable doubt, a higher standard, is a matter left for trial. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

The element that escalates contempt to criminal status is the level of willfulness associated with the conduct. Criminal intent is a specific intent to consciously disregard an order of the court. Criminal intent is defined by 11 F.S.M.C. 104(4) as acting with the conscious purpose to engage in the conduct specified. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

Civil intent can be demonstrated by general intent, or by knowledge defined in 11 F.S.M.C. 104(5) as being aware of the nature of the conduct or omission which brings the conduct or omission within the provision of the code. This standard is expressly distinguished from mere negligence, a negligent act is one born of inattention or carelessness – the opposite of an intended act. An act, not willfully intending the result, creating a substantial risk of the unlawful result, is not an act done purposefully or intentionally. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

– Statutes of Limitation

The statute of limitations begins to run from the commission of an offense, or when the crime is complete. Once prosecution has been commenced the statute of limitations period is no longer available to the prosecution who must then face the task of bringing the defendants to a prompt trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 454-55 (Pon. S. Ct. Tr. 1992).

The day upon which a crime is committed is to be excluded in the computation of the statute of limitations. In re Extradition of Jano, 6 FSM R. 93, 106 (App. 1993).

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. In re Extradition of Jano, 6 FSM R. 93, 107 (App. 1993).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM R. 633, 638 (Chk. 1996).

The government will be permitted to file an amended information to dismiss those counts for which the statute of limitations has expired. FSM v. Edwin, 8 FSM R. 543, 545 (Pon. 1998).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Under 11 F.S.M.C. 105(3)(b) even if the three-year time limitation to prosecute a felony or the two-year time limit to prosecute a misdemeanor has expired, a prosecution may nevertheless be commenced for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case will this provision extend the period of limitations otherwise applicable by more than three years. FSM v. Wainit, 12 FSM R. 105, 109 (Chk. 2003).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 12 FSM R. 105, 109-10 (Chk. 2003).

The right not to be put into jeopardy once when barred by the statute of limitations is not a constitutional right, but rather one created by statute. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

Prosecution for a petty misdemeanor must be commenced within six months after it is committed. FSM v. Ching Feng 76Z, 12 FSM R. 498, 501 (Pon. 2004).

Dismissal of a case is warranted when the statute of limitation applicable to both of the counts in the criminal information had elapsed before the case was filed. FSM v. Ching Feng 76Z, 12 FSM R. 498, 504-05 (Pon. 2004).

The statute of limitations is an affirmative defense which an accused must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Wainit, 13 FSM R. 532, 536 (Chk. 2005).

Under the earlier criminal code, prosecutions for felonies punishable by ten years or less in jail had to start within three years after the offense was committed, and misdemeanor prosecutions within two years after the offense was committed, except as otherwise provided in 11 F.S.M.C. 105. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

Under the earlier criminal code, even if the time limitation to prosecute had expired, a prosecution may nevertheless be commenced for any offense based on misconduct in office by a public officer or employee at any time when the accused was in public office or employment or within two years thereafter, but in no case can the period of limitations otherwise applicable be extended by more than three years. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the law's obvious intent and purpose, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation — one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 13 FSM R. 532, 537 (Chk. 2005).

By deliberately using a different term, "public officer," in 11 F.S.M.C. 105(3)(b) from the ones defined in 11 F.S.M.C. 104(11) and in 11 F.S.M.C. 1301(2), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

A statute's policy is to be found in the legislative intent. And it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words, if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b)'s object was to apply the statute of limitations exception to all public officers, not just to those defined as "public servants" in section 104(11) or as "public officials" in section 1301(2). This was 11 F.S.M.C. 105(3)(b)'s plain and unambiguous meaning. If the drafters had intended to restrict the section 105(3)(b) exception to just those persons that had been defined as "public servants," or as "public officials" they could easily have inserted either term into section 105(3)(b) as they so easily inserted "public servants" in so many other criminal code sections or as they so easily used "public officials" in chapter 13. Instead, the drafters deliberately chose the term "public officer" for section 105(3)(b). FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers — persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

When the public officer tolling exception was part of a provision of general application to the whole criminal code, not to just one portion and the information alleges that the accused used his office to commit the charged offenses, that section did not require that the accused additionally actually use the office to conceal the wrongful act(s), the statute's application was triggered by the accused's alleged use of his office to commit allegedly national offenses. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

The section 105(3)(b) exception to the criminal statute of limitations applied to any public officer in any level of government in the FSM who, based on the public officer's misconduct in office, was charged with the commission of a national criminal offense. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

The time limitation does not run during any time when a prosecution against the accused for the same conduct is pending in the jurisdiction. FSM v. Wainit, 13 FSM R. 532, 541 (Chk. 2005).

As a general principle, the subsection 105(4)(b) tolling the statute of limitations while a prosecution is pending operated independently of the public officer tolling exception in subsection 105(3) because it was applicable to all limitations on criminal prosecutions. Thus, the time tolled by the operation of subsection (4)(b) cannot be included in the subsection (3)(b) three-year limit to the public officer extension of the statute of limitations. FSM v. Wainit, 13 FSM R. 532, 541-42 (Chk. 2005).

FSM law provides that a prosecution commences when an information is filed, and the filing of an information is sufficient for statute of limitations purposes. FSM v. Kansou, 14 FSM R. 128, 131 (Chk. 2006).

Conspiracy is regarded as a continuing offense, hence, the statutory period of limitation therefor begins to run from the time of the last provable overt act in furtherance of the conspiracy. FSM v. Kansou, 14 FSM R. 132, 134 (Chk. 2006).

Conspiracy is punishable by imprisonment for not more than one-half the maximum sentence which is provided for the most serious offense which was the object of the conspiracy if the maximum is less than life imprisonment. When the most serious offense charged as an object of the conspiracy carries a maximum of twenty years' imprisonment, the conspiracy charge thus has a maximum sentence of ten years and therefore a limitations period of three years. FSM v. Kansou, 14 FSM R. 132, 134-35 (Chk. 2006).

For any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, the period of limitation otherwise applicable can be extended by up to three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

Since the maximum penalty for bribery is five years' imprisonment, the general limitation period for bribery is thus three years. FSM v. Kansou, 14 FSM R. 132, 135 (Chk. 2006).

When the statute of limitations is three years for a felony charge and two years for a misdemeanor charge and under the law applicable for offenses in 1999, the statute of limitations was extended, even if the time limitation to prosecute had expired, for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case will this provision extend the limitations period otherwise applicable by more than three years. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

When, under the 1982 national criminal code, the statute of limitations for an offense which is punishable by imprisonment for more than ten years was six years after it is committed and for any other felony was three years, and when the penalty for a person convicted under section 601, if the value of the property or service was \$5,000 or more, was "imprisonment for not more than ten years," the applicable limitations period was three years except as otherwise provided in Title 11, section 105. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

The limitations period for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter can be extended by no more than three years. FSM v. Nifon, 14 FSM R. 309, 312 (Chk. 2006).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of

the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. But the rule of strict construction does not justify an unreasonable interpretation — one contrary to the law's intent. The strict construction rule simply means that ordinary words are to be given their ordinary meaning. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

The common and approved English language usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer tolling provision to the criminal statute of limitations, since the plain, unambiguous, and ordinary meaning of "public officer" (an ordinary term for which no construction is required) is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Under the 2001 criminal code, the applicable limitations periods for murder or treason is any time; for a crime which is punishable by imprisonment for ten years or more is six years or within two years after it is discovered or with reasonable diligence could have been discovered, whichever is longer; and for any other felony is three years or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years. The phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years. The disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

Any request in 2005 for an order to show cause why a defendant should not be held in criminal contempt for failure to appear at the start of the February 5, 2001 trial as required by the witness subpoena served on him, comes much too late since anyone charged with criminal contempt must be charged within three months of the contempt. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

Nothing in Title 11 suggests that the Congress intended the tolling provision set forth at Section 105(3) to apply only to "public officers" acting at the national level. Indeed, when the context of the sections of the statutes relating to crimes against "public servants" and offenses committed by "public officials," clearly shows a congressional intent to limit those sections to federal officers and employees, the trial court correctly rejected efforts to limit the tolling provision for offenses committed by public officers at the national level, as Congress clearly has the power to define crimes and criminals in all states, including the states' political subdivisions. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

There is no authority to limit the power of Congress to define those persons affected by application of a statute of limitation, including any applicable tolling provisions. The Constitution vests in Congress the plenary power to enact laws of general application throughout the entire nation. The statute of limitations, including tolling provision for public officers, is one such law. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

The FSM tolling statute for criminal prosecutions does not require that the accused be fleeing justice. It only requires that the accused either be continuously absent from the jurisdiction or that has no reasonably determinable place of abode or work within the jurisdiction. Maintaining a home in Chuuk for his family there, but residing and working abroad and having no reasonably determinable place of abode or work within the FSM, cannot remove the accused from the operation of the statute. FSM v. Kansou, 15 FSM R. 373, 379 & n.4 (Chk. 2007).

Prosecution for felonies other than murder, treason, or those punishable by imprisonment for ten years or more, must be commenced within three years after it is committed, or within one year after it is discovered or with reasonable diligence could have been discovered, whichever is longer. FSM v.

Narruhn, 15 FSM R. 530, 532 (Chk. 2008).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years because the phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years since the disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

The time periods running from "discovery" of the offense and the date the offense was committed are subject to the qualifier, "whichever is longer." The court will not read into the statute a qualifier of "whichever is shorter" because this would be directly contrary to the statute's plain meaning. The longer of the two possible calculations of the statutory limitations period applies. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

A prosecution has been properly "commenced" when the information was filed within the applicable time period. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

The filing of an information or complaint is one point in time where the statute stops, or tolls, the limitations period from running. The other event that may commence a prosecution and thus toll the statute of limitations is when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. The limitations period is also tolled during any time when the accused is continuously absent from the complaining jurisdiction or has no reasonably determinable place of abode or work within the jurisdiction. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

When two independent actions were both overt acts committed by a member, or members, of the conspiracy within the three years preceding the information's filing, the government filed its information within the applicable statute of limitations. Engichy v. FSM, 15 FSM R. 546, 554 (App. 2008).

Kosrae State Code §13.106(2)(b) imposes a requirement that prosecutions for misdemeanors begin with one year of when the alleged crime was committed. This statute recognizes that a misdemeanor prosecution commenced after one year generally infringes on a defendant's right to a speedy trial. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

When a prosecution was commenced within the time limits set by Kosrae State Code §13.106(2)(b), there is no statutorily-required dismissal. Kosrae v. Langu, 15 FSM R. 601, 604 (Kos. S. Ct. Tr. 2008).

Since, under Kosrae Criminal Rule 12, any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion, this rule encompasses a motion raising a statute of limitations defense. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. Kosrae v. George, 16 FSM R. 228a, 228d (Kos. S. Ct. Tr. 2008).

The statute of limitations begins to run from the commission of an offense, or when the offense is complete. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

A prosecution is commenced when an information is filed in court. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

The dismissal of a case is warranted when the statute of limitations applicable to the count in the criminal information elapses before the case is filed. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

Under the Kosrae State Code, a prosecution for a felony must be commenced within three years after the alleged crime was committed but an extension of the statute of limitations is allowed when an element of the offense is fraud. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the defendant was charged with two counts of forgery, both containing the element of fraud, the statute of limitations is, since fraud is an element of the crime, extended to allow prosecution to commence the action within one year of the discovery of the offense by the aggrieved party, but not in any case is the period of limitation otherwise applicable extended by more than three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

Although when an element of the crime is fraud, the statute of limitations allows a prosecution to commence within one year of an aggrieved party's discovery of an offense, the limitation period cannot be extended by more than an additional three years. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

When the statute of limitations to both counts in a criminal information had elapsed before the case was filed, the dismissal of the case is warranted. Kosrae v. George, 16 FSM R. 228a, 228e (Kos. S. Ct. Tr. 2008).

The underlying reason for having a statute of limitations, which is a statutory time beyond which the action may not be brought, is that the enactment of such laws concerns the belief that there is a point beyond which a prospective defendant should no longer need to worry about the possible commencement in the future of an action against him or her and that the law disfavors stale evidence. Kosrae v. George, 16 FSM R. 228a, 228f (Kos. S. Ct. Tr. 2008).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. Kosrae v. George, 16 FSM R. 228a, 228f (Kos. S. Ct. Tr. 2008).

A prosecution for a misdemeanor must be commenced within two years after it is committed. A prosecution is commenced either when an information or complaint is filed or when an arrest warrant, summons or other process is issued, provided that reasonable attempts are made at service. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

The statute of limitations is not the same as the right to a speedy trial, but it is a referent as to whether the case should be dismissed under the more exacting standard of unnecessary delay found in 12 F.S.M.C. 802. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

Generally, the filing of an information within the statute of limitations time frame weighs in favor of non-dismissal, unless evidence of bad faith reasons for the delay are shown. FSM v. Ezra, 19 FSM R. 497, 506 (Pon. 2014).

– Strict Liability Crime

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific

intent to board the aircraft knowing that it was illegal to do so with a shotgun. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

A heavy maximum penalty of a \$2000 fine and five years imprisonment is not dispositive in determining whether a crime is a strict liability offense. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM R. 442, 449-50 (App. 2000).

The absence of an intent element – either the defendant has a valid sea cucumber permit or he does not – creates a strict liability or liability without fault offense. The defendant's intent is irrelevant. Lee v. Kosrae, 20 FSM R. 160, 166 (App. 2015).

There is no such thing as liability without fault conspiracy. In order to be guilty of conspiring to commit an underlying strict liability offense, the defendant must have the specific intent to violate the underlying law. Lee v. Kosrae, 20 FSM R. 160, 167 (App. 2015).

– Theft

When existing facts having a material bearing upon the desirability of a proposed investment are intentionally misrepresented, the investor has been defrauded, even if the person who has induced the investors by false statements fervently hopes that related promises of future actions, developments or profitability will be fulfilled. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

Where an obvious and unreasonable risk of loss was forced on investors, without their knowledge or consent, by defendant's intentional misstatement of facts, and the defendant thereby obtained money of the investors knowing that he was exposing the investors to risk beyond their knowledge, this is theft in violation of 11 F.S.M.C. 934. Wolfe v. FSM, 2 FSM R. 115, 120 (App. 1985).

When a person makes statements calculated to create a false impression as to value in order to induce those who heard him to give him their money, and the statements did have that result, the person has purposely obtained property through deception within the meaning of 11 F.S.M.C. 932(6). Wolfe v. FSM, 2 FSM R. 115, 121 (App. 1985).

When the government fails to notify defendant of its intention to rely upon 11 F.S.M.C. 931(3), allowing aggregation of amounts involved in the thefts, as its source of jurisdiction, such aggregation will not be allowed. Fred v. FSM, 3 FSM R. 141, 144 (App. 1987).

The crime of grand larceny requires proof beyond a reasonable doubt of the stealing, taking or carrying away of the personal property of another, in the value of \$50 or more, without the owner's knowledge or consent, and with the intent to convert it to one's own use. Kosrae v. Tolenoa, 4 FSM R. 201, 202 (Kos. S. Ct. Tr. 1990).

To prove larceny, the prosecution generally need not prove that the victim had an unassailable right to possession in the items stolen, only that the defendant had no greater right to possession of the stolen items. Kosrae v. Tolenoa, 4 FSM R. 201, 203 (Kos. S. Ct. Tr. 1990).

As with trespass and malicious mischief, a necessary element of the offense of petty larceny is that the subject personalty be "property of another." Thus a good faith belief in a right to the property negates an element of the offense of petty larceny as well. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

Where one, in good faith, takes the property of another and converts it to his own use, believing it to be legally his own, or that he has a legal right to its possession, he is not guilty of larceny, although his claim is based on a misconception of the law or of his right under it, for although ignorance of law and honest intentions cannot shield a man from civil liability for a trespass committed by him, they do protect him from criminal liability by divesting the act of the felonious intent without which it cannot be a crime. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 632 (Pon. 2002).

In order to find an accused guilty of grand larceny, the court must find that the accused 1) stole, took and carried away the personal property of another; 2) valued at more than \$200 but less than \$5,000; 3) without the owner's knowledge or consent: and 4) with the intent to permanently convert it to his own use. Chuuk v. Robert, 16 FSM R. 73, 76, 80 (Chk. S. Ct. Tr. 2008).

When the accused sought and obtained a check in the amount of \$3,100 from the Speaker's and staff travel fund for a medical referral when he was neither authorized nor legally entitled to use the funds, the funds, without authorization for a permissible purpose, remained the property of the state. When the owner of the funds, the allottee Speaker, did not have knowledge or consent to the taking and his authorization and approval was required in order for the accused to legally obtain funds from that account; when the accused intended to permanently convert the funds and never demonstrated his entitlement to using the \$3,100; when the accused did not use the funds for an approved, allotted purpose or return them so that they could be used for an allotted purpose, the allottee of the funds was permanently deprived of their use; and when the accused intended to permanently convert the funds because he sought reimbursement to use the funds for a medical referral, which was not a lawful purpose, the accused is guilty of grand larceny. Chuuk v. Robert, 16 FSM R. 73, 80-81 (Chk. S. Ct. Tr. 2008).

A voucher submitted for a travel authorization in October 2007 could not have been authorized in the spring of 2006 without obligating funds in advance of their appropriation in violation of the Financial Management Act. Chuuk v. Robert, 16 FSM R. 73, 81 n.8 (Chk. S. Ct. Tr. 2008).

Even though the state was able to recover of some of the funds that were not returned and not used for permissible, authorized travel, such recovery did not excuse their taking since the funds were public monies held in the General Fund to be used only for their designated statutory purposes according to the requirements and procedures provided for by law. A travel authorization cannot lawfully be used as a means for a government employee to obtain an interest free personal loan, or for any other purpose not prescribed by statute in accordance with the Chuuk Constitution article VIII, § 2. The state's ability to recover any or all travel funds advanced to a particular traveler has little to no bearing on whether the traveler unlawfully obtained the funds or used them for an unlawful purpose. Chuuk v. Robert, 16 FSM R. 73, 81 (Chk. S. Ct. Tr. 2008).

When the information and supporting affidavits allege that the accused cashed various national government checks that were made payable to fictitious people and that he and his codefendant shared the money thus obtained, those allegations are sufficient to put the accused on notice that the national government claims a legal, equitable, or possessory interest in the funds that the checks were used to obtain and the allegation that the codefendants made checks out to fictitious persons using legitimate travel authorization numbers for other persons and then cashed those checks, dividing the proceeds among themselves, is sufficient to put the accused on notice that the prosecution alleges that the checks were not authorized. FSM v. Sorim, 17 FSM R. 515, 520 (Chk. 2011).

Although conversion has sometimes been called the civil equivalent of theft that is not an accurate description. It is not the same as theft. The crime of theft requires the intent to permanently deprive another of the property. Conversion only requires the defendant's wrongful or unauthorized act of dominion over the plaintiff's property be inconsistent with the owner's right. It does not require the intent to permanently deprive the owner of its property. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

– Traffic Offenses

When neither the Legislature nor the court has provided any rules of procedure for traffic cases, the proper rules to follow are the court's rules of criminal procedure. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

Relevant provisions of Title 12 of the Trust Territory Code regarding traffic citations' definition and procedure continue in effect as Chuuk state law on criminal procedure, as long as these provisions have not been amended or repealed and are consistent with the Chuuk Constitution. Chuuk v. Dereas, 8 FSM R. 599, 601 (Chk. S. Ct. Tr. 1998).

A person who is stopped for a routine traffic offense is not in custody for purposes of Miranda warnings. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The offense of negligent driving requires proof of driving a vehicle in such a manner as to constitute a substantial deviation from the standard of care a reasonable person would exercise in the situation and when the state did not present any witnesses who saw the defendant driving his vehicle and there was no evidence presented to show the manner in which defendant was driving his vehicle and whether it was a substantial deviation from the appropriate standard of care and an officer testified that the defendant reported that he had a problem with his vehicle, it is reasonable to infer that this problem may caused the vehicle to leave the road and come to rest in the culvert. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

The offense of unauthorized operation of a motor vehicle requires proof of operating a motor vehicle on a road without possessing a valid license or learner's permit and when the state did not present any witnesses who saw the defendant operating his vehicle and did not present any evidence that the defendant did not possess a driver's license or learner's permit, there was no evidence presented to prove that the defendant operated his vehicle without a valid license or permit in his possession. The state thus failed to present a prima facie case and the defendant's motion for acquittal on that count was granted and that count dismissed. Kosrae v. Alokoa, 13 FSM R. 82, 83 (Kos. S. Ct. Tr. 2004).

Driving under the influence is driving a vehicle while under the influence of alcoholic drink or a controlled substance or any other intoxicating substance. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The term "under the influence" as establishing a standard of conduct subject to criminal liability, has existed and has been enforced since at least 1970, first as a Trust Territory statute, and then later as a Kosrae state statute. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

When the language of the statute being challenged has been consistently enforced by the prior Trust Territory government and by the Kosrae state government for a cumulative period of at least thirty-five years without challenge and field sobriety tests have also been the predominant, if not sole, standard by which the Kosrae State Police determine whether a person was "under the influence" of alcoholic drink, the court must accord great weight to the constitutionality of Kosrae State Code, Section 13.710 and the use of field sobriety tests. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The criminal offense of driving under the influence, as defined in Kosrae State Code, Section 13.710, is not unconstitutionally vague. The term "under the influence" does give people of ordinary intelligence a reasonable opportunity to know and understand what conduct is prohibited and how to avoid violation. Kosrae v. Phillip, 13 FSM R. 285, 291 (Kos. S. Ct. Tr. 2005).

Field sobriety tests are not subjective and arbitrary although all testing, even the chemical testing of breath, blood or urine that the defendant strongly advocates, is subject to human error. Kosrae v. Phillip, 13 FSM R. 285, 292 (Kos. S. Ct. Tr. 2005).

The offense of driving under the influence requires proof of two elements: driving a vehicle, and being under the influence of alcoholic drink, controlled substance or other intoxicating substance. Kosrae v. Phillip, 14 FSM R. 42, 46 (Kos. S. Ct. Tr. 2006).

The United States National Highway Traffic Safety Administration findings, reports, standards, methods and statements do not constitute the law of the FSM or Kosrae, and are not binding upon the Kosrae State Court. Kosrae v. Phillip, 14 FSM R. 42, 46, 47 (Kos. S. Ct. Tr. 2006).

When evidence was presented regarding the field sobriety tests administered to the defendant, coupled with the evidence regarding the smell of alcohol upon defendant's breath, defendant's red eyes, the presence of open and closed beer cans in the passenger compartment of defendant's vehicle, defendant's actions in driving the vehicle at a high speed more than twice the statutory speed limit, defendant's vehicle weaving in the road and crossing the center line, and defendant's refusal to stop the vehicle after being signaled by the police officer, the state has presented evidence beyond a reasonable doubt that the defendant was impaired and driving under the influence of alcoholic drinks even without consideration of the evidence of the defendant's performance of the one-legged stand field sobriety test. Kosrae v. Phillip, 14 FSM R. 42, 47 (Kos. S. Ct. Tr. 2006).

The offense of driving under the influence requires driving under the influence of an alcoholic drink, controlled substance or any other intoxicating substance: it does not require the presence of any specific blood alcohol percentage. A specific blood alcohol percentage is not an element of the offense of driving under the influence. Kosrae v. Phillip, 14 FSM R. 42, 47 (Kos. S. Ct. Tr. 2006).

The offense of unauthorized consuming, possessing or giving of alcoholic drink is not inclusive of, or a lesser included offense of driving under the influence because the two offenses are committed with completely different actions and do not share even one common element. The offense of unauthorized consuming, possessing or giving of alcoholic drink does not require any involvement of a vehicle, whereas the offense of driving under the influence does not require possession of a alcoholic drink or non-possession of a valid drinking permit. Also, both offenses are classified as category one misdemeanors: neither offense is a classified as lesser than the other. Kosrae v. Phillip, 14 FSM R. 42, 48 (Kos. S. Ct. Tr. 2006).

The offense of driving under the influence requires proof of two elements: driving a vehicle, and being under the influence of alcoholic drink, controlled substance, or other intoxicating substance. Kosrae v. Tulensru, 14 FSM R. 115, 120 (Kos. S. Ct. Tr. 2006).

When the defendant failed two of the three field sobriety tests administered to him, coupled with the evidence regarding the smell of alcoholic drinks upon his breath, his intoxicated appearance, his intoxicated conduct, his failure to stop at a stop sign, his carrying of a beer can to another car after the accident, the state has presented evidence beyond a reasonable doubt that the defendant was impaired and driving

under the influence of alcoholic drinks. Kosrae v. Tulensru, 14 FSM R. 115, 121 (Kos. S. Ct. Tr. 2006).

When there was undisputed evidence presented of the defendant's performance of other physical activity, the court can infer that the defendant's ailments did permit the defendant to complete a variety of activities requiring movement of his arms, legs and body, and did not affect his performance of the field sobriety tests. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

Cases upholding the constitutionality of statutes criminalizing driving "under the influence" reflect the fact that alcohol, its consumption, and effects have long been a part of human experience. DUI statutes enacted with the arrival of the motor vehicle take that experience into account. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

The Kosrae DUI statute does not violate the vagueness doctrine because it employs the phrase "under the influence." It provides both law enforcement officers and judges with the necessary enforcement standards. "Driving under the influence" is commonly understood to mean driving in a state of intoxication that lessens a person's normal ability for clarity and control. A police officer will know that he may take enforcement action where he observes an individual exhibiting this commonly understood behavior. That a police officer must exercise his judgment in evaluating this behavior does not render the statute vague. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

"Driving under the influence" provides a judge with a sufficient enforcement standard. Based upon the evidence that a judge hears and is entitled to consider, he may determine whether a defendant was "under the influence" such that he was driving in a state of intoxication that lessened his normal ability for clarity and control. The statute thus passes constitutional muster. Phillip v. Kosrae, 15 FSM R. 116, 120-21 (App. 2007).

In Micronesia, our communities are small, roadways are limited, and on occasion may be in less than optimal condition. Active village life takes place near those roadways. In this setting, drunken driving can have consequences for people in addition to those who may at any given moment be traveling on, or be in the vicinity of, the roads. A DUI statute that prohibits "driving under the influence" is a useful and reasonably effective means of helping to insure the safety of those who travel on, are present near, or live near public roadways in our island communities. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

When the accused either was or was not driving "under the influence," and it was the arresting officer's job to exercise his judgment to determine whether there was probable cause to believe the accused's ability for clarity and control had been lessened by his consumption of alcohol, or in other words, whether the accused was driving "under the influence," and when Kosrae's statute did not require the accused to offer an explanation for his conduct and any such exculpatory explanation would have been immaterial to his objective state of sobriety or lack thereof, the Kosrae DUI statute is not void for vagueness and does not violate the Due Process Clause of either the Kosrae Constitution or the FSM Constitution. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

Even assuming that the photos not admitted would have shown that the defendant was not at fault in the accident, that would have had no bearing on his state of intoxication because even if the other driver were 100% at fault, there is no question that the defendant was driving a vehicle, and he would still have been subject to conviction under the driving under the influence statute if he were driving that vehicle while under the influence. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

– Trespass

Where there is consent to enter another's property for certain purposes, but a person enters the property with the intent to commit an assault therein a conviction for trespass can be maintained because no consent can be implied to enter for an unlawful purpose. Lawful entry followed by a later unlawful act, however, is not trespass. Alik v. Kosrae, 6 FSM R. 469, 472 (App. 1994).

Since under Yap statutory law trespass is a lesser included offense of burglary, a trespass conviction will be vacated when there is a burglary conviction for the same act. Yinmed v. Yap, 8 FSM R. 95, 101-02 (Yap S. Ct. App. 1997).

A necessary element of the crime of trespass is that the property trespassed upon be property of another. Nelson v. Kosrae, 8 FSM R. 397, 401-02 (App. 1998).

The real property on which a defendant is alleged to have trespassed must be the property of another. A good faith claim of right to the property provides a complete defense to the crime of trespass because it negates the criminal intent necessary for conviction. Nelson v. Kosrae, 8 FSM R. 397, 402 (App. 1998).

As a matter of law, then, if one has a good faith belief that he or she owns the property subject to the crime, he or she cannot be guilty of trespass, malicious mischief or petty larceny. Whether a defendant has a good faith belief in ownership is ordinarily a determination for the trier of fact. Nelson v. Kosrae, 8 FSM R. 397, 402-03 (App. 1998).

The court's role in a civil trespass case is to determine which party has the greater possessory right to disputed property. In a criminal trespass case, in contrast, the court must determine whether the prosecution has established each element of the crime of trespass beyond a reasonable doubt. Nelson v. Kosrae, 8 FSM R. 397, 403 (App. 1998).

Criminal trespass is defined as entering, or causing an object to enter, the dwelling place, premises, or property of another without his express or implied consent, or entering with his consent and, following withdrawal of the consent, refusing to leave the dwelling place, premises, or property. Kosrae v. Jackson, 12 FSM R. 93, 98-99 (Kos. S. Ct. Tr. 2003).

When the householders did not give the defendant permission to enter their home, and when, even assuming that the defendant did have some implied consent to enter the home due to being a family friend, that implied consent did not extend to the time and purpose under consideration – to enter the home between the hours of midnight and 4 am, for the purpose of waking up, and assaulting the handicapped daughter. Kosrae v. Jackson, 12 FSM R. 93, 99 (Kos. S. Ct. Tr. 2003).

The offense of trespass requires proof beyond a reasonable doubt of entering the dwelling place, premises, or property of another without her express or implied consent. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

When the evidence is undisputed that the defendant did not have consent to enter the victim's cookhouse at 2 a.m., (although there appeared to be implied consent for neighbors to cross the victim's property around her house and cookhouse, this consent does not extend to the cookhouse's interior), and that the defendant entered the victim's dwelling place and property without her express or implied consent, the state proved beyond a reasonable doubt all the elements of the criminal offense of trespass. Kosrae v. Sigrah, 12 FSM R. 562, 567 (Kos. S. Ct. Tr. 2004).

The criminal offense of trespass requires proof beyond a reasonable doubt of entering the dwelling place or property of another without consent and when it is undisputed that the defendant entered another's dwelling place without consent at approximately 5:50 a.m., the state has proven beyond a reasonable doubt all of the elements of the criminal offense of trespass. Kosrae v. Anton, 12 FSM R. 606, 610 (Kos. S. Ct. Tr. 2004).

– Venue

All trials of criminal offenses should be held in the state in which the offense was committed. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.2 (App. 1996).

The venue provision in a criminal case in the FSM is not a constitutional right but rather is provided for under statute and under court rule, which provide for the trial of offenses in the state where committed.

The provisions thus do not apply to occurrences not within any state in the FSM, such as in the EEZ. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580 (Pon. 1996).

The primary purpose of the criminal venue requirement is to prevent government oppression of a defendant by requiring him to defend against a criminal prosecution in a place far from his home, counsel and any witnesses or evidence which may be of help to him in his defense. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580 (Pon. 1996).

Trial of a corporation for a crime committed in the FSM EEZ is appropriate on Pohnpei when the corporation's FSM offices are on Pohnpei and most of its witnesses and its counsel are available on Pohnpei. FSM v. Ting Hong Oceanic Enterprises, 7 FSM R. 578, 580-81 (Pon. 1996).

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).

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).

By statute, either a defendant or the government may petition the court for a change of venue for good cause. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

Apart from the rights conferred by 11 F.S.M.C. 106, there is no constitutional or statutory right to trial in the same state as the offense. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

A criminal defendant may raise the issue of venue on any appeal from a final judgment should he be convicted. If he is acquitted, then he has suffered no prejudice. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

A defendant's contention that he will suffer irreparable injury if he is forced to defend his case in a different venue is not persuasive. Any individual who employs private counsel to defend himself in a criminal case will incur the costs of defense, even if he is ultimately acquitted. FSM v. Wainit, 11 FSM R. 411, 413 (Pon. 2003).

Prosecutors' seeking a change of venue do not necessarily indicate bias so that they could continue to prosecute when the case is ready for immediate trial and, under the then alleged prevailing conditions, any FSM prosecutor might have felt unsafe unless venue were changed. FSM v. Wainit, 12 FSM R. 172, 177 (Chk. 2003).

CUSTOM AND TRADITION

A customary privilege to enter one's cousin's house cannot be exercised by pounding on the walls of the house at two a.m. until a hole for entry is created and shouting threats at the occupants. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general customary privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

Familial relationships are at the core of Micronesian society and are the source of numerous rights and obligations which influence practically every aspect of the lives of individual Micronesians. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution, FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code, 11 F.S.M.C. 108, 1003. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

While the court may find that a criminal defendant's conduct did not violate the criminal law and the defendant owes no debt to society in general, this does not suggest that the defendant has necessarily fulfilled all customary obligations he may owe to a relative who was the victim of his actions. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matter. The Constitution's framers specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

Under appropriate circumstances, customary law may assume importance equal to or greater than particular written provisions in the National Criminal Code. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 139-40 (Pon. 1982).

Customary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes. FSM v. Mudong, 1 FSM R. 135, 139 (Pon. 1982).

Customary settlements do not require court dismissal of court proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The FSM Supreme Court is required by the National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of customary law, but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

The burden of proof is on a defendant to establish effect of customary law; the effect of customary apology ceremony on court proceedings is not self-evident. 11 F.S.M.C. 108(3). FSM v. Mudong, 1 FSM R. 135, 141-43.

Customary law and the constitutional legal system perform different roles; they may mutually support each other. Neither system controls the other. FSM v. Mudong, 1 FSM R. 135, 145 (Kos. 1982).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Mudong, 1 FSM R. 135, 147-48 (Pon. 1982).

The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect. In re Iriarte (II), 1 FSM R. 255, 271 (Pon. 1982).

When no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. FSM v. Raitoun, 1 FSM R. 589, 591-92 (Truk 1984).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Even where the parties have not asserted that any principle of custom or tradition applies, the court has an obligation of its own to consider custom and tradition. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

Where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. Panuelo v. Pohnpei (I), 2 FSM R. 150, 159 (Pon. 1986).

Defendants are not within the coverage of FSM Constitution article V, section 1, preserving "the role or function of a traditional leader as recognized by custom and tradition," simply by virtue of their status as municipal police officers. Teruo v. FSM, 2 FSM R. 167, 172 (App. 1986).

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

An agreement between the FSM National Government and operators of a United States fishing vessel in an attempt to terminate court proceedings, is not the kind of matter that historically came within principles of custom and tradition. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

In a case of first impression concerning national employment contracts, when no party points to applicable customary principles of law or traditional values, the FSM Supreme Court looks to the common law in other jurisdictions to assist in developing legal principles suitable for Micronesia. Falcam v. FSM Postal Serv., 3 FSM R. 112, 120 (Pon. 1987).

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. Tammed v. FSM, 4 FSM R. 266, 278 (App. 1990).

The duty of a national court justice to give full and careful consideration to a request to consider a particular customary practice or value in arriving at a decision requires careful investigation of the nature and customary effect of the specific practice at issue, a serious effort to reconcile the custom and tradition with other constitutional requirements, and an individualized decision as to whether the specific custom or tradition should be given effect in the particular contexts of the case before the court. Tammed v. FSM, 4 FSM R. 266, 279 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out

these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the Federated States of Micronesia. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the Federated States of Micronesia. What a petitioner may not do is seek the court's involvement in a customary adoption. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

Any claim to resources in the EEZ based upon custom and tradition must rest with clans, families and individuals rather than with the states. Chuuk v. Secretary of Finance, 8 FSM R. 353, 379 (Pon. 1998).

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be

seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

In a civil case when a defendant seeks to advance Pohnpeian customary practice as a defense, the burden is on the defendant to establish by a preponderance of the evidence the relevant custom and tradition. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158-59 (App. 1999).

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution, but when there was no customary reconciliation reached among the defendant and the victims, there is no consideration of this factor for sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

An obligation to give aid to someone in need does not mean that it may be done in an illegal manner. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 & n.7 (App. 2006).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

There is a general deference to local officials' knowledge of local customs. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

While the ultimate burden of persuasion remains with the government, a defendant, asserting an affirmative defense, has some burden of proof or of going forward with sufficient evidence to raise the defense as an issue at trial. When custom is raised, it is usually more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

A defendant's motion to dismiss on the ground of custom will be denied, but he will be free to present evidence at trial concerning his defense(s), if applicable. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

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).

Before the establishment of the FSM constitutional government, customary law was inferior in legal status to written law promulgated by the administering authority, or any official or legislative body, which often disregarded, or considered void, any custom or customary law in conflict with written law, but under FSM law, customary law is not placed in an exalted or overriding posture under the FSM Constitution and statutes, but neither is it relegated to its previous inferior status. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

Custom is a law established by long usage and is by common consent and uniform practice so that it becomes the law of the place, or of the subject matter, to which it relates. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

It is only when a local custom is firmly established and generally known and been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected that it will be judicially noticed by the court. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

When there is a dispute about the existence or effect of a local custom, and the court is not satisfied

about either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the court's satisfaction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642-43 (Pon. 2016).

Rare is the case where the court benefits from clear, uncontradicted evidence of custom on point in a given matter presented by knowledgeable authorities. The great difficulty in applying custom is that unlike other sources of law, it is uncodified. Custom is revealed through human practice and oral description, and owing to the diversity of cultures and languages in the FSM, the court must rely almost entirely on witness testimony to elucidate particular customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

– Chuuk

In Trukese society, the husband, as the head of the household, is responsible for taking care of the family legal matters such as signing of documents, and overseeing all family financial matters. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Either the husband or the wife may prosecute or defend a civil action in which one or both are parties, provided that he or she has informed his or her spouse of the representation. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Even when the parties have not raised an issue of custom or tradition, the court has an obligation of its own to consider custom and tradition. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM R. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

The absolute defenses of Assumption of the Risk and Contributory Negligence are contrary to the traditional Chuukese concepts of responsibility and shall not be available in Chuuk State. Epiti v. Chuuk, 5 FSM R. 162, 167 (Chk. S. Ct. Tr. 1991).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwääniichi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM R. 288, 290-91 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM R. 577, 578 (Chk. S. Ct. Tr. 1998).

A court's finding of guilt and sentencing would not render illegal, or prevent, customary forgiveness of the defendant by the victim's family or clan. Whatever the court does, customary settlement may remain desirable to resolve lingering hostility and disputes between the families. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

A customary forgiveness ceremony resolving disputes among families or clans may not prevent the court system from determining the individual guilt of the defendant and considering whether societal notions of justice and the need to uphold law and order require fining, imprisonment or other restriction of the defendant's freedom. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

Because the trend of the application of customary settlements in the criminal justice system, is its use as excuse, justification or mitigation during the imposition of sentence after conviction for a crime and not as an element of guilt or the dismissal of an information and complaint charging a criminal offense, a motion for dismissal of a major criminal charge on the grounds that a customary settlement has been reached will be denied. Chuuk v. Sound, 8 FSM R. 577, 579-80 (Chk. S. Ct. Tr. 1998).

Because the Chuuk Constitution requires the courts to make decisions consistent with Chuukese customs and traditions, Chuukese custom and tradition may prevail over the provisions of a holographic will in deciding who may enter upon land for the purpose of making reasonable use thereof. In re Ori, 8 FSM R. 593, 595 (Chk. S. Ct. App. 1998).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that

those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of *afokur* as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

Under Chuukese custom and tradition the oldest sister may have the authority in family and lineage matters to sign for younger family members, but the youngest sister does not have the authority, under custom and tradition, to sign for the older ones. Stephen v. Chuuk, 11 FSM R. 36, 44 (Chk. S. Ct. Tr. 2002).

An *afokur's* rights to lineage land are permissive use rights only. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (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).

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).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Distribution of benefits within a lineage is an internal lineage matter. Courts generally will not involve themselves in a lineage's internal affairs. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The court is unaware of any tradition or custom within Chuukese society for a child, or even an adult, to carry the last name of his or her step-father or step-mother, and finds and concludes that no such tradition or custom exists. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any *acheche* of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

A lineage is an entity similar to a corporation 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 the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

A traditional gift of *nechop* is a Chuukese custom through which someone gives property to another in gratitude for care giving. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

When the testimony on *nechop* is sufficient to establish that it existed as a custom and that, when employed, it operated to disrupt the status quo of matrilineal descent, the trial court did not ignore the established custom of Chuukese matrilineal descent in accepting that a *nechop* took place since it was proven by a preponderance of the evidence that the *nechop* took place. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Proof of the existence of a custom is a factual issue. The burden is therefore on the proponents to prove by a preponderance of the evidence that *achemwir* is a custom practiced in Chuuk, and they have the further burden of proving that the requirements of the custom were met. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

To prove an *achemwir* adoption, the consent of the adoptive lineage's members must be proven. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Consent of lineage members, if not given contemporaneously, may, at least in some contexts, be shown by evidence of ratification through the lineage members' later conduct. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

When Epen Inong brought Yosko Epen to live among members of his lineage, but his lineage members did not treat her as a lineage member since she did not participate in lineage member meetings and decision-making and since she was referred to as Epen Inong's daughter and not as a "sister" as would be proper if she had been a lineage member through an *achemwir* adoption, there is no admitted evidence

showing that the lineage members, by their subsequent conduct, consented to or ratified an achemwir adoption of Yosko Epen. Peter v. Jessy, 17 FSM R. 163, 171-72 (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).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

Under Chuukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

If a decedent had been married, this would not eliminate parental support under custom, nor would it relieve the wrongdoer under the wrongful death statute. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Since there is no indication that parental support has ceased to be the custom in Chuuk and since parents are undoubtedly "other next of kin" under the Chuuk wrongful death statute, parents of adult children, consistent with custom, are included within the single class of persons entitled to recover in a wrongful death action even when there are other members (surviving spouse and children) of the class present. But even when a plaintiff is within the class of persons who may benefit from a wrongful death action, that plaintiff still must prove pecuniary damages in order for a money judgment to be awarded, and, of course, the plaintiff must also prove the other elements of a wrongful death cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (Chk. S. Ct. Tr. 2012).

– Kosrae

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).

Pursuant to the Kosrae State Code, the court cannot consider tradition unless satisfactory evidence of it is introduced. Kosrae Code 6.303. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraean custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Under the Kosrae Code, a court cannot consider tradition unless satisfactory evidence of tradition is introduced. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

The court is required to receive satisfactory evidence that custom or tradition applies to a case, before utilizing it. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

Kosrae customary practice is to hold wedding ceremonies at a church or at the home of the bride or groom. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

The burden of proving custom and tradition relies on the party asserting its effect. When both parties were specifically given the opportunity to offer such evidence, but neither party took that opportunity, the court correctly concluded that no Kosraean customary transfer or acquisition of land could be considered because no party offered evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298-99 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 6.303 prohibits the trial court's application of custom and tradition unless there is satisfactory evidence of the tradition or custom. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (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 existing 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).

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

– Pohnpei

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).

Judicial decisions, including interpretations of rules of civil procedure, should be consistent with the Constitution and with the Pohnpeian concept of justice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

The Pohnpeian custom of "Ke pwurohng omw mwur," according to which one reaps the fruit of one's misdeed, requires the lessor to bear the consequences of his failure to repossess the rented vehicle from the lessee. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

Customary law takes precedence over the common law, according to Pon. Const. art. 5, § 1; 1 TTC 103; 1 F.S.M.C. 203. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

The Pohnpei Supreme Court may look to Pohnpeian customs and concepts of justice when there are no statutes governing the subject matter, but it may also draw from common law concepts when they are appropriate. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 64 (Pon. S. Ct. Tr. 1986).

The common Pohnpeian custom of assisting a person in need should not be dispensed with in order to allow the defense of contributory negligence or assumption of risk to be raised. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70-71 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court declines to adopt the "collateral source" rule, according to which alternative sources of income available to a victim are not allowed to be deducted from the amount the negligent party owes, because it does not want to discourage customary forms of family restitution. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

Under Pohnpeian state law after confirmation of a customary separation or divorce under 39 TTC 5, the court may order custody and child support under 39 TTC 103. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon.

1990).

Although under historical Pohnpeian customary law only the husband had rights over the children of the marriage, now both parents have rights and responsibilities in connection with a marriage and the court should take this into consideration in determining child custody rights and support payment obligations in cases of customary divorce. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

The doctrine of comparative negligence is more consistent with life in Pohnpei in that the doctrine recognizes that injuries and damages are often caused through a combination of errors and misjudgments by more than one person. Nothing in Pohnpei custom absolves a party who caused injury to another from the customary obligations of apology and reconciliation because the injured party's negligence contributed to the injury. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

The Pohnpei court system has to be extra cautious applying the foreignly developed concepts of criminal justice into its own, so that in adopting or applying such concepts it does so without doing injustice to Pohnpeian culture and traditional values. Pohnpei v. Weilbacher, 5 FSM R. 431, 449 (Pon. S. Ct. Tr. 1992).

The Pohnpeian customary practice of quickly resolving conflict resulting from the commission of an act is closely related to, if not the counterpart of the Western concept of a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 450 (Pon. S. Ct. Tr. 1992).

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).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (Pon. 2015).

Customary marriage is based on a flexible standard and is not established by a single test or a defined

set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

In a civil case, the party advancing Pohnpeian customary practice or law must establish, by a preponderance of the evidence, the relevant custom and tradition. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

The traditional and customary right of the Nahnmwarki of each established municipality of Pohnpei to receive offerings from their respective subjects is firmly established in history and still widely known and peacefully accepted by the citizens of Pohnpei, thereby making it a judicially noticeable fact. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Even assuming *arguendo* that wide recognition and practice of the custom has disappeared so as to preclude judicial notice of its existence, testimony given by the Iso Nahmken of Nett provides a sufficient basis to conclude that the custom is still practiced today when he testified that the custom is still practiced and the defendants failed to sufficiently rebut that testimony and a conclusory argument to the contrary was not evidence. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

The custom that Mwoalen Wahu members receive from their constituents various marine life that inhabit Pohnpei waters, allegedly threatened by the proposed harvesting scheme, remains an active customary law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

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– Yap

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to

perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

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The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

Tabinaw are a salient social feature of the main island of Yap, but may not be in Yap's outer islands or on Eauripik. Thus, the failure to mention *tabinaw* membership in the plaintiffs' proposed class definition may not make the class designation indefinite. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

CUSTOMS

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).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The Customs Act of 1996 gives the FSM the authority to investigate and perform post-audits of declared CIF values after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

An importer has the responsibility of fully and accurately declaring the value of all dutiable goods. The amount of penalties for understating the value of the imported goods depends on who discovers the understatement and the timing of the discovery in relation to the release of the goods. If the FSM discovers the understatement before the release of the goods, a 100% penalty applies. A 100% penalty also applies if the importer or owner discovers and reports the understatement within 10 days of the release of the goods. A 200% penalty applies in all other cases of understatement. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

While the statute is not explicit, instances where a 200% penalty will apply include when the importer or owner discovers and reports the understatement more than 10 days after the release of the goods and when the FSM discovers the understatement anytime after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

The FSM is within its statutory authority to conduct a post-audit investigation after the goods have been released. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

Appraisalment is just one of the valuation methods set forth in Section 223; there are several other preferred methods for arriving at an equivalent CIF price when the CIF price cannot be reasonably determined. For instance, an equivalent CIF price can be established through the value of identical goods at the CIF location. Only when all other preferable methods fail to render an equivalent CIF price does the statute permit the use of appraisalment to arrive at the CIF price. Ruben v. FSM, 15 FSM R. 508, 516 (Pon. 2008).

DEBTORS' AND CREDITORS' RIGHTS

With respect to liens, first in time is not always first in right. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A prior statutory lien will not necessarily be given priority over all liens which arise subsequently. Rather, the effect to be given to a statutory lien must be determined through interpretation of the statute which provides for the lien. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

In an insolvency proceeding, a broad range of issues must be decided for which there is little or no guidance by way of statute or precedent, and the court is acting as an equitable court and must apply equitable principles to the circumstances of each case to reach a fair result. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 296 (Pon. 1988).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

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).

Without more, continuing guaranties given to a creditor do not establish any lien rights for the creditor against property of the debtor whose obligations are covered by the guaranty. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 304 (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).

Where it becomes apparent that claims of 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).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (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).

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).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution, in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (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).

In an insolvency proceeding, holders of writs of execution should be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs, subject to the rights of the creditors entitled to superior treatment by virtue of statutory lien priority or extraordinary equitable relief. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 582 (Pon. 1988).

In an insolvency proceeding, claimants without liens and not entitled to special equitable treatment, who comply with a court order or with the instructions of a court appointed receiver, trustee or other custodian to substantiate their claims against the debtor's estate after the proceedings have been consolidated, shall receive payment on a pro rata basis with other creditors in the same class. In re Pacific

Islands Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

In an insolvency proceeding, judgment creditors with judgments issued on or before the consolidation of the case but without writs of execution as of that time are prioritized on a pro rata basis, after satisfaction of claims of lienholders, those with special equitable claims and holders of writs of execution. In re Pacific Distrib. Co., 3 FSM R. 575, 583 (Pon. 1988).

The final class of creditors entitled to distribution in an insolvency proceeding shall consist of all the debtor's remaining creditors who either reduced their claims to judgment after the consolidation date or who substantiate their claims according to the receiver's instructions. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

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 assignment. 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).

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).

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).

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).

The trial court did not abuse its discretion when it ruled that judgment creditor who had accepted assignment of debtor's accounts receivable should not otherwise participate in distribution of assets of insolvent debtor. In re Island Hardware, Inc., 5 FSM R. 170, 174 (App. 1991).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor has no standing to vindicate the rights of any of the creditors against other creditors. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

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).

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).

An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. California Pac. Assocs. v. Alexander, 7 FSM R. 198, 200 (Pon. 1995).

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

Appointment of a receiver is not appropriate when what little evidence that has been presented on the financial strength of the defendant company is long out of date, there is no reliable measure of the value of defendant's current assets and liabilities, no finding of insolvency, and plaintiffs have not demonstrated that the available legal remedy – the reduction of their claims to judgment, followed by a demand for payment, will be insufficient to provide the relief to which they may later prove themselves entitled. Lavides v. Weilbacher, 7 FSM R. 400, 402-03 (Pon. 1996).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452-53 (App. 1996).

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 enjoined. In re Kolonia Consumers Coop. Ass'n, 9 FSM R. 297, 300 (Pon. 2000).

When a judgment-debtor has unilaterally increased his indebtedness to non-judgment creditors while not increasing his payments to his judgment-creditor, it is the judgment-debtor who should bear the burden

of this improvidence, and not the judgment-creditor. The court will therefore order the allotment amounts for the new voluntary debts to be allotted to the judgment-creditor's debt instead. Bank of Guam v. Tuuth, 9 FSM R. 467, 469-70 (Yap 2000).

As between a judgment creditor and a creditor who has not instituted legal action, the judgment creditor should enjoy a priority. Bank of Guam v. Tuuth, 9 FSM R. 467, 470 (Yap 2000).

The national government is not subject to writ of garnishment or other judicial process to apply funds or other assets it owes to a state to satisfy the state's obligation to a third person. FSM v. Louis, 9 FSM R. 474, 479 (App. 2000).

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).

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).

When Chuuk has ultimate access to money on a monthly basis that greatly exceeds the amount of the civil rights judgment, Chuuk must pay the judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A court shall determine the fastest manner in which the debtor can reasonably pay a judgment. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When a judgment was entered over four years ago, and the bulk of it remains outstanding and the debtor has the means to pay, the judgment should be paid forthwith. Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 102 (Kos. 2001).

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).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment

when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. 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).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. Davis v. Kutta, 10 FSM R. 125, 127 (Chk. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

An agreement between two defendants who are jointly liable on the note, whereby one of them would assume full responsibility on the note (and thereby "releasing" the other from responsibility on the note), is not binding on the plaintiff, especially when the note's language clearly states that in the case of joint obligors, one of the obligors can only be released from liability via a signed writing, signed by an official of the plaintiff bank. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

An agreement between two defendants, jointly responsible on a loan, as to who will be responsible to pay back the loan is not binding on the creditor unless the creditor clearly assents to the agreement. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When the parties' written agreement requires that a writing signed by a bank officer would be necessary to release one of the obligors from responsibility on the note, the presence of a bank employee at the defendants' divorce proceeding (regardless of whether that employee were an officer or agent), and his failure to object to the defendants' settlement agreement, without more, would not release one of the defendants from liability to the bank on the note. Bank of the FSM v. Hebel, 10 FSM R. 279, 285 (Pon. 2001).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them,

and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A promissory note is a term of art. There is a division of authority as to whether a document containing no express promise to pay constitutes a promissory note, but a writing that does not include such promise-to-pay language, but which is signed by the party to be charged is enforceable on its face as an acknowledgment of a debt. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

The general rule is that payments are applied to interest first, and then to principal. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 477 (Pon. 2001).

Unpaid interest and principal, consolidated into a new principal sum for purposes of a new loan is not a violation of a statute that prohibits interest compounding, since interest compounding results where interest is automatically compounded, and not where interest has become due, has not been paid, and becomes the subject of a new loan agreement. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 475, 478 (Pon. 2001).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

Previous insolvency cases involved juridical persons, either corporations or cooperatives, which after they were declared insolvent and the creditors paid to the extent they could be, were dissolved. Once a corporation's or a cooperative's assets are all paid out and the corporation or cooperative is dissolved, unpaid creditors are generally without further recourse to collect any unpaid sums. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM R. 520, 525-26 (Chk. 2003).

Even if the court can declare natural persons insolvent in the manner it can and has declared corporations and cooperatives insolvent, the court does not have the authority to "discharge" a natural person judgment-debtor's debts short of full satisfaction of the judgment. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

There is no impediment to appointing a receiver in the absence of an insolvency declaration, especially

when it is the judgment-debtors who ask that one be appointed. In re Engichy, 11 FSM R. 520, 526 (Chk. 2003).

In order to purge any possible contempt buy the judgment-debtors, the court may order the receiver to pay out of funds on deposit with the court the arrearages accrued on orders in aid of judgment before the judgments were consolidated. In re Engichy, 11 FSM R. 520, 526 (Chk. 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 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 creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

In the usual case, the payment of a money judgment against the state must abide a legislative appropriation. "The usual case" means the ordinary civil case for money damages. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

The court will not determine the state to be insolvent and appoint a receiver to manage its debts to insure the payment of its judgments because it is a much more drastic approach than garnishment and it is also a course upon which the court will not embark without the benefit of a substantially fuller record than that now before it. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 (Chk. 2003).

That a promissory note's co-signer did not receive the loan proceeds, but the other signers did and they spent it, is not a defense to an action on the note or a ground for dismissal of the case against the co-signer. LPP Mortgage Ltd. v. Maras, 12 FSM R. 27, 28 (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).

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).

Even though the FSM does not have a bankruptcy code, the FSM Supreme Court has previously recognized the appointment of receivers or special masters to engage in collection efforts on behalf of insolvent corporate entities. A trustee's purpose in a bankruptcy proceeding is similar to the appointment of a receiver or collection agent to act on behalf of an insolvent corporation, and the fact of a corporation's insolvency does not affect the ability of a trustee, receiver, or collection agent to proceed on a corporation's behalf to recover assets in the corporation's name, and for the benefit of the corporation's creditors or shareholders. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM R. 140, 149 (Pon. 2003).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

When the defendants contend that they cannot be liable on the guaranty because the guaranty secures the promissory note on which they are named as the promisors, but can only prevail on this argument if they are the primary obligors on the loan, but they are not, and never were even though certain writings failed to properly reflect that, and when those writings have been reformed, this contention is without merit. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 10 (Pon. 2004).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A debtor is not an indispensable party under Rule 19 in an action to enforce a guaranty of payment. A lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

When, under the terms of a guaranty, the guarantors waived any right to require the bank to proceed against the borrower, to proceed against or exhaust any security held from the borrower, or to pursue any other remedy in its power whatsoever, the guarantors' contention that the bank could not proceed against them without also proceeding against the borrower is without merit. FSM Dev. Bank v. Arthur, 13 FSM R.

1, 11 (Pon. 2004).

Guaranties and suretyships bear many similarities. A guaranty creates a secondary obligation under which the guarantor promises to be responsible for the debt of another. The guarantor is only secondarily liable, and then only on proof of the default by the principal debtor. A suretyship differs from a guarantee in that a surety's obligation to the creditor is primary and unconditional whereas a guarantor's obligation is secondary and conditioned on the principal's default. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 11 (Pon. 2004).

A court does not need to determine whether an instrument is a guaranty or a surety when the result would be the same. FSM Dev. Bank v. Arthur, 13 FSM R. 1, 12 (Pon. 2004).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

As a general rule, in the absence of an agreement or stipulation to the contrary, a debt is payable at the place where the creditor resides, or at his place of business, if he has one, or wherever else he may be found; and ordinarily it is the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within the state of his residence when the payment is due. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (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).

Since a partial payment constitutes an acknowledgment of the debt, it is implicitly treated as a new promise to pay, and a new promise to pay has the effect of starting any limitations period all over again. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Under Rule 69, post-judgment discovery is available only to judgment creditors. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

The right to post-judgment discovery is limited to judgment creditors, who are usually, but not always, plaintiffs who succeeded in obtaining a money judgment. Rule 69 is meant to benefit a judgment creditor, not a judgment debtor. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73-74 (Pon. 2015).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment debtor has no discovery rights under Rule 69, which makes sense because once a money judgment has been rendered, the only relevant factual inquiry is the debtor's ability to pay the judgment and the fastest manner in which the debtor can reasonably pay it. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 (Pon. 2015).

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).

When the primary performer, the borrower, stopped making loan repayments to the bank and defaulted, the guarantors were then bound to perform on the loan repayments once the borrower had ceased to. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

– Orders in Aid of Judgment

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM R. 449, 453 (App. 1996).

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).

The statute authorizing issuance of an order in aid of judgment, 6 F.S.M.C. 1409, presents two issues: the debtor's ability to pay, and the most expeditious way that payment can be accomplished. Louis v. Kutta, 8 FSM R. 312, 316 (Chk. 1998).

A court has an interest in insuring that its orders are heeded, and this interest exists apart from any interest the parties may have in the litigation. A court may take whatever reasonable steps are appropriate to insure compliance with its orders. It need not rely on the parties themselves to prescribe the way in which its orders will be carried out, or its judgments executed. Louis v. Kutta, 8 FSM R. 312, 318 (Chk. 1998).

By statute, a court has wide latitude in crafting an order in aid of judgment and may even modify the order on its own motion. Louis v. Kutta, 8 FSM R. 312, 319 (Chk. 1998).

Under 11 F.S.M.C. 701 *et seq.* a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

Under 6 F.S.M.C. 1409, an individual judgment debtor is allowed to "retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents," but if the debtor has some limited ability to pay, the court can order some payment. Davis v. Kutta, 8 FSM R. 338, 342 (Chk. 1998).

Under 6 F.S.M.C. 1410(2), an order in aid of judgment may provide for the sale of particular assets, such as unencumbered property that is not necessary for the debtor to meet his family and customary obligations, and payment of the net proceeds to the creditor. Davis v. Kutta, 8 FSM R. 338, 343 (Chk. 1998).

Under 6 F.S.M.C. 1409, the court makes two inquiries: the judgment debtor's ability to pay, and the fastest manner to accomplish payment. Davis v. Kutta, 8 FSM R. 338, 343 (Chk. 1998).

Because the court must consider the debtor's ability to pay, an order which takes this factor properly into consideration will not result, in and of itself, in the financial undoing of a debtor. Davis v. Kutta, 8 FSM R. 338, 344 (Chk. 1998).

A motion for an order in aid of judgment against the State of Chuuk to assign sufficient assets to pay a money judgment will be denied because the state may make payments subject only to legislative appropriation. Judah v. Chuuk, 9 FSM R. 41, 42 (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).

The court may modify any order in aid of judgment as justice may require, at any time, upon the application of either party and notice to the other, or on the court's own motion. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

A court may grant a debtor's motion to modify an order in aid of judgment when the debtor's proposed commitment to pay is reasonable. Davis v. Kutta, 10 FSM R. 224, 225 (Chk. 2001).

A judgment debtor's request to the court for a hearing, pursuant to 6 F.S.M.C. 1409 to determine its ability to pay the debt and the fastest means to pay and satisfy the judgment constitutes a motion for an order in aid of judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Either party may apply for an order in aid of judgment. Once it has, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Walter v. Chuuk, 10 FSM R. 312, 316-17 (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 procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which, under the Chuuk Constitution's Transition Clause, is still applicable law in Chuuk. Section 55, by its terms, does not bar its application to a government judgment debtor. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

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).

Any order in aid of judgment may, be modified by the trial court at any time upon application of either party and notice to the other, or on the court's own motion. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

It is generally within the Chuuk State Supreme Court's power to issue an order in aid of judgment. This power derives from the court's power to issue all writs for equitable and legal relief. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In deciding whether to issue an order in aid of judgment, the court is presented with two issues: 1) the debtor's ability to pay, and 2) the fastest manner in which the debtor can reasonably pay the judgment based upon the finding of ability to pay. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

As a matter of law, the court cannot issue an order directing the state to pay money absent an appropriation therefor. The inquiry, then, is how, when funds are available to pay judgments, the court can assist a judgment creditor in getting his judgment paid in the fastest manner. Narruhn v. Chuuk, 11 FSM R. 48, 53 (Chk. S. Ct. Tr. 2002).

In addressing the question of how best to assure payment of a judgment in "the fastest manner," the court is mindful of the fact that it has wide latitude in crafting an order in aid of judgment. While the court cannot direct the Legislature to appropriate money to pay a judgment, it does have the authority to compel the Director of Treasury, and the Governor, through mandamus, to meet their non-discretionary duty to pay judgments in a fair and non-discriminatory manner. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

A judgment creditor needing continuing medical care resulting from a state employee's negligent or

wilful conduct, may apply to the court for specific relief, and assuming funds have been appropriated for payment of the state's judgment debts which remain undisbursed and available, any such judgment creditor shall receive payment on his or her judgment regardless of the judgment's date of entry. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

A major purpose for granting consolidation of judgments is to establish the payment priority for the consolidated judgments and to implement an orderly payment plan involving one, instead of multiple, orders in aid of judgments. 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).

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).

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).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

On motion for an order in aid of judgment, the court must determine both the question of the judgment debtor's ability to pay and the fastest manner in which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (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).

A stipulated judgment, even after court approval, cannot confer jurisdiction on a court to issue an order in aid of judgment against Chuuk in direct contravention of a statute. Regardless of the stipulated judgment's language, the court simply cannot violate the statute and issue an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

When no appropriation has been made, general or otherwise, for the payment of judgments, even if the court were to issue an order in aid of judgment, and even if the state government were to identify funds from some other source for payment of the judgment, the Chuuk Financial Control Commission would be precluded from approving the payment pursuant to the order in aid of judgment since it is precluded from paying any court ordered judgements unless specifically appropriated by law. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

Under a Chuuk State Supreme Court decision, if money was appropriated to pay court judgments, the oldest judgment must be paid in full before any payment could be made on the next oldest judgment. Ben v. Chuuk, 11 FSM R. 649, 652 (Chk. S. Ct. Tr. 2003).

An order in aid of judgment only requires future payment according to its terms, which invariably will not be immediate payment in full, and which may later be modified. 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).

An order in aid of judgment generally deals not only with funds and assets currently in a judgment-debtor's possession but also with funds that are expected to come into the judgment-debtor's possession in the future. In re Engichy, 12 FSM R. 58, 72 (Chk. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences

that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM R. 169, 171-72 (Pon. 2003).

When a person has entered the plaintiff's parcel on at least two occasions and harvested crops in violation of the court's decision that the plaintiff is the fee simple owner of the parcel, an injunction will issue against that person and the defendants which prohibits further trespass and taking of crops from the parcel, and the defendants will be given a reasonable time to remove a local hut that they have constructed on parcel. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

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).

The trial court can issue an order in aid of judgment requiring the state executive branch to submit, within thirty days of entry of this order, an appropriation request to the Legislature for funds to satisfy the judgment. Barrett v. Chuuk, 14 FSM R. 509, 511 (Chk. 2006).

Civil Rule 6(d) provides that all motions shall contain certification by the movant that a reasonable effort has been made to obtain the opposing party's agreement or acquiescence and that no such agreement has been forthcoming, but a motion for an order in aid of judgment, which is what the court must consider a motion for a writ of garnishment to be, is governed by statute, and that statute does not require that a movant first seek the opposing party's agreement or acquiescence before moving for an order in aid of judgment. The procedural rules are not meant to alter that statutory scheme. Tipingeni v. Chuuk, 14 FSM R. 539, 542 (Chk. 2007).

A judgment-creditor's motion that asks for a court order to assist it in obtaining, or to facilitate, the payment of a money judgment, is a motion for an order in aid of judgment regardless of what the movant has called it because a thing is what it is regardless of what someone chooses to call it. Chuuk v. Andrew, 15 FSM R. 39, 42 & n.1 (Chk. S. Ct. App. 2007).

The procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one, is contained in section 55 of Title 8 of the Trust Territory Code, which requires the court, after notice to the opposite party, to hold a hearing on the question of the debtor's ability to pay and to determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

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).

When the State has not made the appropriation act a part of the record, the appellate court is unable to

determine whether the \$20,000 ordered payment to a judgment-creditor violated the terms of that statute or whether it was only contrary to the Executive branch's hoped-for distribution of the appropriated funds. Chuuk v. Andrew, 15 FSM R. 39, 42-43 (Chk. S. Ct. App. 2007).

The trial court must not issue any orders in aid of judgment against the State without affording the State notice and an opportunity to be heard and a finding that the State has the physical and legal ability to pay. Chuuk v. Andrew, 15 FSM R. 39, 43 (Chk. S. Ct. App. 2007).

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 procedure for a judgment creditor to obtain an order in aid of judgment and the authority for a court to issue one is contained in section 55 of Title 8 of the Trust Territory Code, which is still applicable law in Chuuk. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The statute requires that an order in aid of judgment hearing can only be held after an application for an order in aid of judgment and notice of that application has been given to the opposing party. Since an application for an order in aid of judgment must be made an adequate time for notice before the motion hearing, it must be made in writing. The Civil Rules provide that adequate time for service of the notice is not later than 5 days before the time specified for the hearing. Therefore, in order to obtain an order in aid of judgment, a party must serve a written motion on the opposing party at least five days before the specified hearing date. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay. In the case of a governmental debtor, this finding must include the debtor's legal ability to pay (e.g., whether money has been appropriated that can legally be applied to that debt). Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

A trial judge's calculated and repeated disregard of governing rules of orders in aid of judgment would also support the issuance of a writ of prohibition that the trial judge issue no further orders in aid of judgment without complying with the statute and without first ruling on the pending motion to stay. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

After obtaining a judgment, the judgment holder is entitled by statute to seek an order in aid of judgment to force payment and determine the best means to effectuate such payment. The purpose of an order in aid of judgment is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

Once a party has applied for an order in aid of judgment, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

A plaintiff's motion for a temporary restraining order filed after judgment had already been entered

against the defendant and after the plaintiff had already requested an order in aid of judgment will be denied since the plaintiff has an available remedy in its motion for an order in aid of judgment and since it seeks to restrain funds in the hands of a third party without a specific determination as to the defendant's right to any part of those funds. Chuuk Public Utilities Corp. v. Billimon, 15 FSM R. 290, 293 (Chk. S. Ct. Tr. 2007).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

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).

Once either party has moved for an order in aid of judgment, the court, after notice to the opposite party, must hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on its finding. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 637 (Pon. 2008).

Payment by cash on hand is always the fastest way in which the debtor can reasonably pay a judgment. The next fastest way to pay is through the sale of highly liquid assets that can readily be reduced to cash. Unlike stock in closely-held corporations for which there is no readily identifiable market for their shares or easily ascertained value, stock, which is traded daily on major stock exchanges and the prices reported, is almost as liquid as cash. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 638-39 (Pon. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

The presence of the debtors' property in a Guam brokerage account does not affect the validity of an order in aid of judgment. While generally a court does not have jurisdiction over property in another jurisdiction because it cannot enforce its orders there, the court does have jurisdiction over the judgment-debtor's person. Thus, if the court were to order a debtor to sell property in another country and to pay or deposit the proceeds with some person or the court, and, if the judgment-debtor did not obey that order, the court could then impose sanctions on the debtor, such as, civil contempt of court to coerce the judgment-debtor's compliance or criminal contempt of court to punish the judgment-debtor's disobedience. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 (Pon. 2008).

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).

By statute, contempt proceedings to enforce judgments and orders in aid of judgment are meant to be civil matters. Further, by statute, orders in aid of judgment require hearings in which the court determines the judgment debtor's ability to pay. Since a judgment debtor is present at such hearings, no order in aid of judgment can logically issue without the court's determination of the debtor's ability to pay and the debtor's knowledge of the order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

In the context of failure to comply with an order in aid of judgment, there are four points in time when there may be a question of ability to pay: 1) when the order in aid was issued; 2) when the debtor misses a payment; 3) when the motion is submitted; and 4) when the hearing is held. Because the court assesses ability to pay when the order in aid is issued, the first point is irrelevant and because civil contempt is not used to punish past misconduct, ability to pay at the second point is similarly irrelevant, unless the moving party wishes to request criminal contempt proceedings, in which case the court may refer the matter to the appropriate government prosecutor. The remaining times are when the motion is submitted, and when the hearing is held. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226 (Kos. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

If a debtor cannot overcome the moving party's evidence that the debtor in fact had the ability to pay when the motion was submitted, the court will find him in contempt only if he still has the same ability to pay at the time of the hearing; and in either case the moving party may request a separate adjudication as to criminal contempt. If the debtor did not have the ability to pay when the motion was submitted, the court will not entertain any request for a separate adjudication as to criminal contempt and will find him in contempt only if he has regained the same ability to pay at the time of the hearing. If the debtor's ability to pay at the time of the hearing is diminished, the court will not find him in contempt, but may issue a modified order in aid. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 227 (Kos. 2010).

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).

Under FSM law, land or an 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, provided the court deems that justice so requires and finds that the debtor will have sufficient land remaining after the sale to support himself and his dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 323-24 (Kos. 2011).

When the judgment-creditor, by its offer to subdivide a parcel so as to ensure that the debtor's daughter and son-in-law can continue to live in the house on the parcel's back portion, has gone out of its way to accommodate not only the letter but the spirit of the law, the court concludes that a fee simple interest in land may be attached and executed under national law and that the creditor's proposal would leave the debtor with sufficient land to support her and her dependents. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When a creditor is seeking a judicial power of sale that would subdivide a parcel, Kos. S.C. § 11.404(1)'s subdivision language is inapplicable because it applies to private powers of sale. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When seeking to enforce a judgment against the State of Chuuk, the full set of factors a trial court should consider are: 1) the nature of the judgment, such as whether the judgment is in tort or contract, whether the judgment is full or partial, and whether or not the judgment includes a civil rights component; 2) whether or not the debtor has acted in good or bad faith in its attempts to satisfy the judgment; 3) the length of time the judgment has gone unsatisfied; 4) the ability of the debtor to pay; and 5) the balance of interests. Such factors are best weighed by the trial court. Stephen v. Chuuk, 17 FSM R. 453, 461 (App. 2011).

Statutorily, a motion for an order in aid of judgment requires a hearing at which the trial court assesses the debtor's ability to pay the judgment. Stephen v. Chuuk, 17 FSM R. 453, 461 n.4 (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).

Upon remand, and as part of the factors for considering orders in aid of judgment, the trial court should spell out the nature of the judgment, so as to provide clarity and avoid obfuscation of issues. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

When Chuuk's deficiencies in addressing its judgment debt stem not so much from bad faith as it does from general fiscal ineptitude and from the lack of a sense of urgency or of a judgment's importance, the court will not doubt that Chuuk has made good faith efforts to address its debt problems and to reduce its overall debt. Stephen v. Chuuk, 18 FSM R. 22, 25-26 (Chk. 2011).

The court will not make six and a half years after a civil rights judgment the magic date after which the judgment-holder can begin to seek the judgment's collection through extraordinary measures. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 2011).

When Chuuk has a limited ability to make some payment on the judgment but does not have the ability to pay the judgment in full at one time; when, if the court were to garnish the funds held in Chuuk's current account with the FSM for the full amount, it is unlikely that the garnished funds would satisfy the judgment but it is certain that such a garnishment would seriously hinder Chuuk's ability to function since the Chuuk Legislature, having estimated the amount that would be available from this source, has appropriated such sums for various vital uses, the court characterized the judgment's size as unwieldy as there is a strong public interest in Chuuk having sufficient fiscal resources to maintain a minimum level of basic and essential public services such that the public's health, safety, and welfare are not jeopardized and it would be an onerous burden on Chuuk's governmental operations to evict Chuuk from part of its warehouse. Stephen v. Chuuk, 18 FSM R. 22, 26 (Chk. 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 parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

Funds received from U.S. military retirement and U.S. Social Security benefits are not the type of property that qualify as exemptions under 6 F.S.M.C. 1414 because the U.S. statutes have no force and effect outside of U.S. territory. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 2012).

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).

Since the statutory exemptions on judicial enforcement of judgments pertaining to U.S. Social Security and U.S. military retirement benefits are provided for by U.S. statutes and the judicial enforcement of FSM judgments is governed by FSM statutes, a judgment-debtor whose income is U.S. Social Security and U.S. military retirement benefits and who has the ability to pay will be ordered to make monthly payments toward the satisfaction of the judgment. Bank of Hawaii v. Dison, 18 FSM R. 161, 164 (Pon. 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).

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 trial court did not err in denying the defendants' motion to raise the minimum bid price when the motion was filed after the sale was held and the defendants were appealing the sale price but not the sale itself and the sale was conducted 56 days after the amended order in aid of judgment setting a minimum sale price was entered. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500-01 (App. 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 procedure for issuing an order in aid of judgment is governed by statute. The court, after notice to the opposite party, must hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

The trial court cannot issue an order in aid of judgment without first making a finding about the debtor's ability to pay, which, in the case of a governmental debtor, must include the debtor's legal ability to pay, that is, whether money has been appropriated that can legally be applied to that debt. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

In the usual case, the payment of a money judgment against a state must abide a legislative appropriation since due respect must be given to the constitutional separation of powers. Alexander v. Pohnpei, 19 FSM R. 133, 135-36 (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).

Since the payment of judgments is not a representation expense in the course of the Pohnpei Governor's official public relations, the court cannot issue an order in aid of judgment to use those funds to pay a judgment. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

A request to order the Pohnpei Governor to reprogram funds or to use his representation funds to pay a judgment will be denied. The judgment holder must await the outcome of the legislative process. Alexander v. Pohnpei, 19 FSM R. 133, 136 (Pon. 2013).

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

There is no true conflict between the U.S. statutes 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).

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).

A \$300 payment on a 1998 judgment could not have reduced the principal by \$300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by \$300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 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).

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 judgment creditor has discovery tools available to him under Kosrae Civil Procedure Rule 69(a) under which a judgment creditor may obtain discovery from any person, including the judgment debtor. George v. Sigrah, 19 FSM R. 210, 220 n.6 (App. 2013).

Often at an order-in-aid-of-judgment hearing, the judgment debtor, having been subpoenaed as a witness by the judgment creditor, will be called to testify, about his or her finances, assets, income, and ability to pay. Based on this evidence and other evidence the judgment creditor has introduced through other witness testimony or documentary exhibits, as well as any evidence similarly introduced by the judgment debtor, the trial judge makes his findings about the fastest way in which the judgment debtor can reasonably satisfy the judgment and fashions his order in aid of judgment accordingly. Argument of counsel is not evidence on which the court can base its factual findings. George v. Sigrah, 19 FSM R. 210, 220-21 (App. 2013).

When the order-in-aid-of-judgment hearing is on the judgment creditor's motion, his counsel should have the opportunity to present his evidence and his witnesses first and the judgment debtor's counsel should present his side next with the judgment editor's counsel having any last words. Any future order-in-aid-of-judgment hearing should follow this procedure. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

When the previous sale of the RS Plaza Building still left a substantial outstanding balance, 6 F.S.M.C. 1409 allows for a successive request for an order in aid of judgment because the judgment has not been

satisfied in full. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

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).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A writ of ne exeat would require the defendant to surrender her passport and prevent her from leaving the FSM until she complies with all court orders and pays tax arrearages in full. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

The writ ne exeat republica is an obscure writ that is ancient, and infrequently used, and is an extraordinary writ which should issue only in exceptional cases. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (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).

Post-judgment discovery from any person is expressly available. The judgment creditor or a successor in interest when that interest appears of record, may, in aid of the judgment or execution, obtain discovery from any person, including the judgment debtor. The judgment creditor is allowed discovery to find out about assets on which execution can issue or about assets that have been fraudulently transferred or are otherwise beyond the reach of execution. FSM Dev. Bank v. Carl, 20 FSM R. 329, 333 (Pon. 2016).

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 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).

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. 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).

As required by 6 F.S.M.C. 1409, the court will schedule a hearing on the motions for an order to show cause for the failure to comply with an order in aid of judgment and for an order in aid of judgment. FSM Dev. Bank v. Carl, 20 FSM R. 592, 595 (Pon. 2016).

When the land whose title transfer is sought was owned only by one defendant, that defendant is the only defendant with standing to oppose the title transfer. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 611 n.1 (Pon. 2016).

Since an order in aid of judgment may provide for the sale of the judgment debtor's particular assets and the payment of that sale's net proceeds to the judgment creditor, a judgment creditor does not have to first acquire title to a particular asset before it is sold for the creditor's benefit. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

Since a statute provides for the sale of a judgment debtor's particular non-exempt assets with the net proceeds to be paid to the judgment creditor and since such an order may be made only after a hearing on a motion for an order in aid of judgment, when such a hearing was held and the judgment debtor appeared at that hearing and agreed to the land's sale, the court may issue an order in aid of judgment that contained an order of sale for that parcel. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

– Secured Transactions

Because courts generally were concerned that third parties, especially other potential creditors, might rely to their detriment on assets which are in the possession of the borrower but, unknown to the other parties, are subject to a secret lien, there exists in the law a strong general policy against non-possessory and secret liens. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 279 (Pon. 1986).

The common law of the United States today concerning secured transactions is the Uniform Commercial Code (UCC), a comprehensive statute covering commercial transactions. Absence in the Federated States of Micronesia of any filing requirement to notify others of a security interest, and of a designated place for filing, which provisions are at the heart of the UCC statutory scheme, virtually precludes any judicial attempt to draw heavily on UCC principles in fashioning an approach to secured transactions. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 287 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When a party agrees to create a security interest to secure his debt but then refuses to do what is necessary to vest the other party with statutory or common law lien rights in the property, courts can find that the other party has an equitable lien in property even if statutory or common law lien requirements have not been made. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

Non-possessory equitable liens will not be found to exist against another who had neither actual notice nor reason to know of the existence of the security claim. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 290 (Pon. 1986).

In absence of an authorized statute, a claim of a chattel mortgage will not be upheld as an equitable

lien against third parties who had neither actual notice nor reason to know of the existence of the security claim unless there has been some method of notice so that other interested persons could have a reasonable opportunity to become aware of the security interest. In re Island Hardware, 3 FSM R. 332, 340 (Pon. 1988).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

Secured transactions within the Federated States of Micronesia remain subject to the policies applied elsewhere prior to the adoption of the Uniform Commercial Code. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

In the absence of a statute authorizing the recording of security interests, security agreements should be authenticated by a controller, accountant, bookkeeper, or other employee with firsthand, personal knowledge of the secured party's books and records. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A secured interest will not be given priority status when there is no recording statute, thus making it a secret lien, and where there is no transfer of dominion to the lender, and the lender appears to claim a floating interest. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 664 (Pon. 1996).

It has long been recognized in the FSM, that secret liens are not enforceable against third parties. Banks in the past have attempted to assert a priority right for unpaid loan balances where the loan was used to purchase chattel property. The court has denied them and refused to uphold the asserted liens against third parties. This is controlling law in the FSM. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (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. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Because there are no statutory schemes in the FSM to record liens and mortgages on chattel property and provide notice thereof because no Micronesian legislature has established any, except that for vessels, chattel mortgages are therefore secret liens which cannot be enforced against third parties who had neither notice nor reason to know of the security interest claim. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Generally, a secured interest will not be given priority status when there is no recording statute, thus making it a secret lien. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

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).

If a security interest has been perfected under Title 33, chapter 10 of the FSM Code, the secured party will, by virtue of a judgment, be entitled to foreclose as a post-judgment remedy. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 288 (Chk. 2009).

If a security interest has been perfected, the secured party will, by virtue of a judgment, be entitled to foreclose. This is a post-judgment remedy and the secured party may also have other post-judgment remedies available to it. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 339 (Chk. 2009).

A pre-judgment possession hearing should be an expedited proceeding because the statute provides that a secured party is entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 569, 571 (Kos. 2013).

A motion to dismiss that was a matter of first impression, had to be carefully considered and denied before the court could proceed with a pre-judgment possession hearing. 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).

Since a secured party under a prior transaction may file a notice of the property interest created by the prior transaction within sixty days of the Secured Transactions Act's effective date in the same manner as provided for a notice of a security interest and since the Act became effective on October 2, 2006, a November 29, 2006 filing of a notice of security interest in a prior transaction created a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 594-95 (Kos. 2013).

The Secured Transactions Act is an existing, applicable FSM statute that covers the pre-judgment seizure of property by a secured party. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

When the secured party's application contains a statement under oath verifying the existence of the attached security agreement and identifies two events of the debtor's default; when it has perfected its security interest by properly filing it with the FSM Secured Transactions Filing Office; and when the debtor has defaulted on the loan payments, the secured party has, under 33 F.S.M.C. 1052, a right to take lawful possession of the collateral. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM

statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When a security agreement covers fixtures, the secured party may, if it chooses, proceed under the Secured Transactions Act and obtain a 33 F.S.M.C. 1053(3) order for pre-judgment possession of the fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A general description of the collateral is sufficient. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

When, except for the factory building, the vehicles, and the inventory, the rest of the listed items on the filing would fit the general description as water bottling machines and equipment needed to produce bottled water and thus be collateral subject to the bank's security interest even if the attachment to the agreement was an illegitimate expansion of the bank's security interests, the bank is therefore entitled, after the debtor has defaulted, to immediate possession of those chattels in which it has a perfected security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

An assignment executed between a bank and a borrower that provides that, in the event of a default, the bank is the sole and exclusive party entitled to possession of the subject property/premises and to operate the subject business and to receive all income therefrom is a right to possession and operation that, although a security interest, is not a security interest that can be, or was, perfected under Title 33, chapter 10, because it involves real property – the factory building – and the incorporeal right to operate the business from that building. On its face, this is an executory contract for which there was an offer, acceptance, definite terms, and consideration. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

While 33 F.S.M.C. 1053 gives a secured party the right to pre-judgment possession of collateral – chattels – in which the secured party has perfected a security interest, it does not authorize the court to issue a pre-judgment order enforcing specific performance of a contract designed to give a lender further security in the event of a default or to issue an order granting the lender pre-judgment possession of property in which it does not have a perfected security interest and in which it could not perfect a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

The right to a debtor's income is an intangible property right in which a lender could have perfected a security interest. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

The Secured Transactions Act generally recognizes an obligor's liability for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

Besides pre-judgment possession of the collateral, under the Secured Transactions Act, the creditor also has the remedies of writ of attachment and release and modification and may seek a foreclosure action against a debtor's secured or unsecured property whether or not it has taken possession of the collateral.

FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

In order for a secured party's seizure of collateral to be a waiver of the secured party's right to a deficiency judgment, that waiver ordinarily would have to be expressly provided for in the mortgage documents or in a statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

A secured party's possession of the debtor's collateral will not constitute a waiver by the secured party of its right to proceed and obtain a judgment for any deficiency. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 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).

– Setoff

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. 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).

A setoff is a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor, or the counterbalancing sum owed by the creditor. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A promissory note will not bear any interest past the date it is setoff against an opposing claim. Phillip

v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Setoff implies that both the plaintiff and defendant have independent causes of action maintainable against the other, while mitigation (of damages) does not involve facts which constitute a cause of action in favor of the defendant, but facts that show that the plaintiff is not entitled to as large an amount as the plaintiff's showing would otherwise justify. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

The doctrine of set-off, as recognized in the FSM, applies between parties when the party being sued has no defense to an action but has a cause of action against the party suing him that arises out of the same right and the party being sued asks the court to determine the parties' mutual liability. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

The setoff doctrine only applies when liabilities are mutual. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Since Ruo municipality and Piisemwar municipality are distinct parties, each responsible for its own obligations and liabilities, Ruo municipality is under no obligation to answer to Shigeto's Store's claim against Piisemwar municipality. Therefore, the respective liabilities of these parties cannot be set-off against each other. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

Two municipalities cannot be jointly and severally liable for each others' debts because each municipality has a separate account in the State treasury, because each municipality is authorized to obligate funds from its municipal account, and because the municipality, not the state, obligates those funds and once the funds are obligated, the municipality, not the state, owes the obligation. Therefore, the amount Piisemwar municipality owes to Shigeto's cannot be set-off against the amount Shigeto's owes Ruo municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197 (Chk. S. Ct. Tr. 2010).

When Shigeto's contracted with Piisemwar municipality for the purchase of motors and the state was not a party to that contract and when Shigeto's Store has not raised any other basis for liability other than set-off between the contracts it had with Ruo and Piisemwar municipalities, judgment will enter for Shigeto's Store and against only Piisemwar municipality. Ruo Municipality v. Shigeto's Store, 17 FSM R. 195, 197-98 (Chk. S. Ct. Tr. 2010).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

DOMESTIC RELATIONS

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

– Adoption

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the FSM. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. In re Marquez, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the Federated States of Micronesia. What a petitioner may not do is seek the court's involvement in a customary adoption. In re Marquez, 5 FSM R.

381, 383 (Pon. 1992).

6 F.S.M.C. 1615 grants the court jurisdiction to confirm customary adoptions. For the court to hear a petition to confirm a customary adoption there must first be a challenge to the validity of that adoption. Furthermore, the challenge must either cause "serious embarrassment" to one of the parties, or affect their property rights. Mere speculation or gossip will not suffice. In re Marquez, 5 FSM R. 381, 383-84 (Pon. 1992).

Before the court may confirm a customary adoption, there must first have occurred a customary adoption. Thus, a threshold question is whether a customary adoption has taken place. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

A petition to confirm a customary adoption which fails to indicate that the customary adoption has occurred is premature and unreviewable. In re Marquez, 5 FSM R. 381, 385 (Pon. 1992).

The court has no statutory authority to enter a decree of adoption, pursuant to statute, for an adult. In re Jae Joong Hwang, 6 FSM R. 331, 331 (Chk. S. Ct. Tr. 1994).

An adoption of an adult may qualify for recognition by the court if done under Chuukese custom. In re Jae Joong Hwang, 6 FSM R. 331, 332 (Chk. S. Ct. Tr. 1994).

To prove an *achemwir* adoption, the consent of the adoptive lineage's members must be proven. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

When Epen Inong brought Yosko Epen to live among members of his lineage, but his lineage members did not treat her as a lineage member since she did not participate in lineage member meetings and decision-making and since she was referred to as Epen Inong's daughter and not as a "sister" as would be proper if she had been a lineage member through an *achemwir* adoption, there is no admitted evidence showing that the lineage members, by their subsequent conduct, consented to or ratified an *achemwir* adoption of Yosko Epen. Peter v. Jessy, 17 FSM R. 163, 171-72 (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).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an

adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

– Child Support and Custody

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: 1) the mother initiated the litigation; 2) the couple was married and resided together; 3) their children were born and have always lived; and 4) the mother still resides. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Under Pohnpeian state law after confirmation of a customary separation or divorce under 39 TTC 5, the court may order custody and child support under 39 TTC 103. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

Although under historical Pohnpeian customary law only the husband had rights over the children of the marriage, now both parents have rights and responsibilities in connection with a marriage and the court should take this into consideration in determining child custody rights and support payment obligations in cases of customary divorce. Pernet v. Aflague, 4 FSM R. 222, 225 (Pon. 1990).

Under the law of Pohnpei a court may award child custody, and, if necessary order child support. The standard to be applied is the "best interests of the child." Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

Under the law of Pohnpei support of the children is the responsibility of both parents. A court may order the parent without custody to make support payments. In granting or denying a divorce, the court may make such orders for custody of minor children, for their support as it deems justice and the best interests of all concerned may require. Youngstrom v. Youngstrom, 6 FSM R. 304, 306 (Pon. 1993).

If a court deems justice and the best interest of all concerned so require, it may award past child support. When considering child support, it is the best interests of the children with which a court is most concerned. Youngstrom v. Youngstrom, 6 FSM R. 304, 306 (Pon. 1993).

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).

Citation to other cases is of limited assistance in framing an award for child support because a child support award is an inherently fact specific determination that must be made on a case by case basis. Youngstrom v. Youngstrom, 7 FSM R. 34, 37 (App. 1995).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

A proceeding for enforcement in the FSM of a CNMI child support order 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).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

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).

Pohnpei state law anticipates the prosecution of child support enforcement actions in foreign jurisdictions, and provides plaintiffs with a procedure and remedy that is identical to that which they would enjoy under the national code. Villazon v. Mafnas, 11 FSM R. 309, 311 (Pon. 2003).

A biological father whose paternity has been established owes his natural child a duty of support. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 2003).

The interests of justice require an award of child support based upon the custom, tradition, prevailing economic status of Kosrae, the child's needs, the plaintiff's household status, and the defendant's earning capacity in Guam. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 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).

Plaintiffs seeking to prosecute a foreign child support enforcement action must file their action in state court, where they will be provided with a procedure and remedy that is identical to that which they would enjoy under the national code. When such a case has been filed in the FSM Supreme Court, it will be ordered transferred to a state court with the proviso that if that court has not ruled on the issues presented within 45 days, the FSM Supreme Court may reinstitute active proceedings. The national court's role is to docket and transfer the case to a state court for determination of the paternity and child support issues. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as

the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

Reciprocal support enforcement procedure requires that a state attorney general's office be diligent in its prosecution of it, and that, after a hearing, the state court will issue an order that decides the paternity question and determines the amount of child support and medical insurance coverage, if any, to which the petitioner is entitled. Anson v. Rutmag, 11 FSM R. 570, 572-73 (Pon. 2003).

Since any decree as to custody or support of the parties' minor children is subject to revision by the court at any time upon motion of either party, the court has on-going jurisdiction to reconsider the question of child support previously decided. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

In the context of a confirmation of a customary divorce, the court has awarded reimbursement for child support expenses where the father made no support payments, even when part of the reimbursement is sought for a period when no pendente lite order requiring support payments was in effect. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

When it is a court-ordered divorce decree's child support provisions, not a confirmation of a customary divorce, that a party seeks to modify, the court, bearing in mind the suitability to the FSM of any specific common law principle, may, in determining Pohnpei law, look to the Restatements (compilations of U.S. common law according to subject matter) and decisions from jurisdictions outside the FSM that also follow the common law tradition. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

Court-ordered child support payments may be modified at any time circumstances render such a change appropriate, but the modification operates prospectively only. Child support cannot be modified retroactively. This is consistent with the equitable principle, suitable for Micronesia or elsewhere, that one having a claim should pursue it when he or she first has notice of it. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a child support decree may be subject to revision by the court at any time, a party seeking modification of child support must show a substantial change in circumstances not anticipated by the original decree in order to justify the modification. For determination is the question of the children's needs, and not the standard of living desired by the custodial parent. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a divorced party's ability to help defray the alleged increased child support costs is certainly a valid consideration generally, it does not go to the question of the children's alleged changed circumstances (i.e., increased needs), which is the primary issue for determination in a support modification proceeding. When the custodial parent was aware in 1993 of these needs, her remedy was to move for modification under 6 F.S.M.C. 1622 at the time when she first had notice. It was not to wait nearly ten years until she had learned that his income had increased and her child support was about to terminate when during this period, he was making all of the court-ordered payments, a factor which the court may legitimately give some attention to in judging the equities as between the parties and their children's welfare. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Under Pohnpei law, both the mother and the father are responsible for their children's support. The parties' obligation to support their children is in accordance with their respective abilities. It is sound public policy to require both parents to make some contribution toward the support of their children regardless of income disparity. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Even if one divorced party's income is greater than the other's, that fact alone does not support a proposed modification to shift all of the pre-motion child-rearing costs retroactively to the higher-income party. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

The obligation to support the parties' children is, after all, one that the mother must share with the

father, taking into account her ability to contribute. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

When under the separation agreement, the father is only obligated to support the parties' adult children while they are pursuing post secondary education and since a child has re-enrolled in college and the father has now resumed paying her expenses and another has left school, these two do not entitle the mother to any measure of relief. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

A requested child support order will be denied as redundant when it is already in the parties' court-approved separation agreement and past history shows that the father has complied with it. Ramp v. Ramp, 11 FSM R. 630, 643-44 (Pon. 2003).

– Divorce

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

Since a divorce case involves the status or condition of a person and his relation to other persons the law to be applied is the law of the domicile. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

Title 6, section 1622, FSM Code provides that any decree as to custody or support of the parties' minor children is subject to revision by the court at any time, but does not provide for continuing jurisdiction over property issues. Ramp v. Ramp, 11 FSM R. 630, 633 n.1 (Pon. 2003).

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).

– Marriage

A marriage procured and induced by fraud is void ab initio and the party whose consent was so procured is entitled to a judgment annulling the marriage. Burrow v. Burrow, 6 FSM R. 203, 204-05 (Pon. 1993).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to