MANDAMUS AND PROHIBITION

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

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).

Although mandamus cases usually involve judges and arise out of pending cases, a case may arise out of an administrative procedure and the public official may be a clerk instead of a judge or justice. Nonetheless the same principles apply, and mandamus may be the appropriate remedy where there is undue delay. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

The standards governing the issuance of a writ of mandamus are well-recognized. The exact formulations may, however, differ somewhat. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272 (App. 1999).

The power to grant the writ is discretionary. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

The party seeking the writ of mandamus has the burden of showing that its right to the writ's issuance is clear and undisputable. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Merely being a case of first impression does not automatically make a petition not frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440-41 (App. 2004).

Rule 38 sanctions will not be awarded when the petition was not wholly without merit or was frivolous since the constitutional issues relating to a privacy right had not been previously ruled upon. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

A writ of procedendo is a high prerogative writ of extraordinary nature that is an order from a superior court to an inferior court to proceed to judgment without trying to tell the inferior court what its judgment should be. It was the earliest remedy for refusal or neglect of justice by the courts, and, in many jurisdictions, the writ has become obsolete, and a writ of mandamus may be sought instead. Mori v. Hasiguchi, 16 FSM R. 382, 385 n.1 (Chk. 2009).

FSM Appellate Rule 21 is a nearly verbatim adoption of U.S. Federal Appellate Rule 21, and so special consideration should be given to United States decisions regarding application of Appellate Rule 21. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A

writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

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).

It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is usually accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

A lower court should not be made a defendant when seeking judicial review of its actions in a higher court. Judicial review of a lower court's acts or omissions is properly accomplished by an appeal to a higher court or, on rare occasion, by a petition for a prerogative writ, such as prohibition or mandamus. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

– Authority and Jurisdiction

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).

That the FSM Supreme Court has the general power to issue writs of mandamus is beyond controversy. 4 F.S.M.C. 117. However, exercise of such power must be tempered by sober judgment, for it is equally settled that the writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Damarlane v. Santos, 6 FSM R. 45, 46 (Pon. 1993).

Chuuk State Supreme Court has the power to issue all writs for equitable and legal relief including writs of mandamus and prohibition. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The Supreme Court has the power to issue writs of prohibition or of mandamus but may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Writs of mandamus are issued in aid of the court's appellate jurisdiction. The court's authority is not confined to issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

For the purposes of writs of mandamus an inferior court is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior court has been to exert the revisory appellate power over the inferior court. 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).

If it were proper to issue a writ of mandamus directed to the Pohnpei Supreme Court appellate division, it could only be done upon application to the FSM Supreme Court appellate division, not to the trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is without jurisdiction to issue a writ of mandamus directed to the Pohnpei Supreme Court. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The Kosrae State Court has the power to issue writs of mandamus but may only do so if the petitioner has met its burden to show that its rights to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy, the object of which is to require an official to carry out a clear, non-discretionary duty. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

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 statutory basis for Appellate Procedure Rule 21(a), which provides for application for a writ of prohibition, is 4 F.S.M.C. 117, which provides that the Supreme Court and each division thereof will have power to issue all writs. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The Chuuk State Supreme Court appellate division has the power to issue writs of prohibition in the appropriate case. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The Cuuk State Supreme Court derives its authority to issue writs of prohibition from Chk. S.L. No. 190-08, § 4, and Chk. App. R. 21(a). Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Courts frequently, in addition to prohibiting a specified action, impose affirmative directions or commands found essential to adequate relief. When the lower tribunal is completely without jurisdiction to act, the court has the authority to not only prevent the lower tribunal's excesses but to also correct the results thereof. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

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).

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. In re Sanction of George, 19 FSM R. 131, 132 (App. 2013).

The 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).

The FSM Supreme Court trial division has the authority to issue writs of mandamus and prohibition as they may be necessary for the due administration of justice because the Supreme Court and each division thereof has power to issue all writs and other process not inconsistent

with law or with the rules of procedure and evidence established by the Chief Justice, as may be necessary for the due administration of justice. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

Since a writ of mandamus issues from a higher tribunal to an inferior tribunal, the trial division may issue a writ of mandamus to compel a public official to perform a duty ministerial in nature and not subject to the official's own discretion. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

An appellate court considers whether a lower court also has original jurisdiction to issue mandamus with the appellate court. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court trial division is a tribunal superior to an FSM administrative agency. It has original jurisdiction over writs of mandamus directed to administrative agencies, and may in an appropriate case issue a writ of mandamus directed to the Secretary of Finance and Administration. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court appellate and trial divisions have concurrent original jurisdiction to issue writs of mandamus directed to administrative agencies. Though courts of last resort are given original jurisdiction to issue writs of mandamus it does not follow that such courts whose principal function is to exercise appellate or supervisory jurisdiction, will assume original jurisdiction in all cases in which their aid may be sought and which otherwise may be a proper case for the use of the remedy. When concurrent original jurisdiction exists, the petitioner ought to show why it is essential or proper that the writ issue from the appellate court rather than from the lower court, and in the absence of such a showing the appellate court may refuse to issue the writ. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288-89 (App. 2014).

Although the FSM Supreme Court appellate division and the trial division have concurrent original jurisdiction over the issuance of a writ of mandamus directed to FSM administrative agencies, absent special circumstances, the writ should be sought first in the trial division and any petition for the writ filed in the appellate division should be dismissed without prejudice to any future filing in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Normally a petition for a writ of mandamus filed in the appellate division when the trial division has concurrent original jurisdiction should be dismissed without prejudice to a future petition filed in the trial division, but when it is obvious that the writ clearly should not be granted, the appellate division can deny it. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 290 (App. 2014).

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 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).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

Under 4 F.S.M.C. 117, the FSM Supreme Court has a constitutional power to issue all writs, including writs of prohibition. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

A prerogative writ such as procedendo, mandamus, or prohibition can only be directed to a court or tribunal lower in rank to the one issuing the writ. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

Since the FSM Supreme Court appellate division is a court that is superior or higher in rank to the Chuuk State Supreme Court appellate division because, as authorized by the FSM Constitution, FSM Const. art. XI, § 7, and the Chuuk Constitution, Chk. Const. art. VII, § 4. The FSM Supreme Court appellate division may thus, but only in the appropriate and rare and exceptional case, issue the high prerogative writ of procedendo or mandamus directed to the Chuuk State Supreme Court appellate division. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus because the Chuuk State Judiciary Act gives all state courts the power to issue writs for equitable and legal relief. Hartman v. Mailo, 21 FSM R. 657, 659 (Chk. S. Ct. Tr. 2018).

– Nature and Scope

The writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitution for appeal, but to require an official to carry out a clear non-discretionary duty. In re Raitoun, 1 FSM R. 561, 562 (App. 1984).

Only under special circumstances that render the matter rare and exceptional should the Federated States of Micronesia Supreme Court appellate division issue a writ of mandamus to

alter a trial judge's conduct before the trial court has completed proceedings and reached a final decision. In re Raitoun, 1 FSM R. 561, 562-63 (App. 1984).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus and prohibition on an interlocutory basis except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. In re Main, 4 FSM R. 255, 258 (App. 1990).

The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ of mandamus. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The single issue presented by a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The general requirements for the issuance of a writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Generally, the writ will not be issued unless the petitioner has objected in the inferior court to that court's exercise of jurisdiction in order to allow the lower court the opportunity to rule properly on the question of its own jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in wrong, damage, and injustice and there is no plain, speedy and adequate remedy otherwise available. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The principal and fundamental purpose of the writ of prohibition is to prevent an encroachment, excess, usurpation or assumption of jurisdiction on the part of an inferior court or tribunal. The issuance of the writ is discretionary and used with great caution for the furtherance of justice and to secure order and regularity in judicial proceedings. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

It is proper to issue a writ of prohibition to restrain a co-equal court or justice from proceeding in a matter that was already pending before another court or justice. Election

Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

The purpose of a writ of mandamus is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from operation of law. In re Failure of Justice to Resign, 7 FSM R. 105, 108-09 (Chk. S. Ct. App. 1995).

The determination of whether the power to grant a writ of mandamus should be exercised entails a court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must therefore be restricted to the most serious and critical ills. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272-73 (App. 1999).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before final judgment below. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

A writ of mandamus is used to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. This is similar to a writ of prohibition, which, instead of commanding an inferior tribunal to do something, commands it not to do something. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119-20 (Pon. 2001).

A writ of mandamus is an extraordinary remedy the purpose of which is to cause a public official to carry out his or her clear, nondiscretionary duty. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Given the nature of the remedy of mandamus, and the caution exercised in affording it, it is important that the right sought to be enforced be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five requirements must be satisfied. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear

nondiscretionary duty. The writ's purpose is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from the operation of law. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

A non-discretionary or ministerial act may be established by the Constitution, by state law or by regulation. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

A writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. The writ may only force a ministerial act or prevent a clear abuse of power; it cannot be used to test or overrule a judge's exercise of discretion. It issues only where there is no other adequate remedy available. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

Issuance now of a writ of mandamus cannot serve as a substitute for the pending appeal. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A mandamus action is an extraordinary remedy that is to be reserved for rare and exceptional circumstances. The requirements for mandamus relief are that 1) the respondent must be a public official; 2) the action sought to be compelled must be nondiscretionary or ministerial; 3) the respondent must be under a clear duty to perform the act; 4) the respondent must have failed or refused to do the act; and 5) no other remedy must exist. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

In order to state a claim for mandamus relief, a petitioner must allege that the respondent official owes him or her a duty so plainly described as to be free from doubt. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

Presumption and belief, irrespective of who makes the assumption or holds the belief, are insufficient to support allegations entitling a petitioner to mandamus relief. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The general requirements for the issuance of a writ of prohibition are that: a court or officer is about to exercise judicial or quasi-judicial power, and the exercise of power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Ordinarily, the writ will not issue unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The court is mindful of its duty to issue the extraordinary writ of prohibition with great caution and is also mindful that it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs

of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, nondiscretionary duty. Such a writ may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of mandamus or prohibition. The issuance of writs is discretionary and must be used with great caution. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

Only under special circumstances that render the matter rare and exceptional should the FSM Supreme Court appellate division issue a writ of mandamus or prohibition to alter a trial judge's conduct before the trial court has completed the proceedings and reached a final decision. The finality requirement and its underlying rationale mandate appellate court restraint, and preclude issuance of writs of mandamus and prohibition on an interlocutory basis, except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court, in its discretion, determines that immediate relief is necessitated. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The FSM Supreme Court's exercise of its power to issue writs of mandamus and prohibition must be tempered by sober judgment, since such writs are extraordinary remedies. The determination whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The five elements that must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition are: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five elements must be satisfied. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Since a prerequisite to the issuance of a writ of mandamus or prohibition is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction

which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

The single issue presented by a petition for a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power and that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. The issuance of writs is discretionary and must be used with great caution. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of mandamus is used to confine an inferior tribunal to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, which is similar to a writ of prohibition that, instead of commanding an inferior tribunal to do something, commands it not to do something. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20-21 (Chk. S. Ct. Tr. 2011).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior tribunal has been to exert the revisory appellate power over the inferior tribunal. For the purpose of a writ of mandamus an inferior tribunal is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. The Chuuk State Election Commission is an agency or tribunal inferior to the Chuuk State Supreme Court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer or body, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 2013).

For the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal

duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available, and each of these five elements must be satisfied. A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty or prevent a clear abuse of power. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The issuance of writs of mandamus or prohibition must be done with great caution and cannot be used to test or overrule a judge's exercise of discretion, and a mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, will not suffice to support the issuance of a writ of prohibition. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The single issue presented by a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate legal remedy otherwise available. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Five elements must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ cannot be used to test or overrule a judge's exercise of discretion, and mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The single issue presented by a petition for a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate remedy otherwise available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (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).

When a case has languished in the Pohnpei Supreme Court trial division since 1991, any party, instead of filing suit in the FSM Supreme Court, could have sought from the Pohnpei Supreme Court appellate division a writ of mandamus or a writ of procedendo as a remedy for the lower Pohnpei state court's refusal or neglect of justice. Such a writ would order the trial court to make a decision in the case without telling the lower court what its decision should be. Carius v. Johnson, 20 FSM R. 143, 145-46 (Pon. 2015).

A writ of prohibition is an extraordinary remedy and may only prevent a clear abuse of discretion; it may not be used to overrule a trial judge's sound exercise of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248-49 (App. 2015).

The determination of whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested, and no writ will issue if the petitioner has not first established that the trial judge had a duty and violated it. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A writ of procedendo is a high prerogative writ of extraordinary nature that is an order from a superior or higher court to a lower court to proceed to judgment without trying to tell the lower court what its judgment should be. It was the earliest remedy for refusal or neglect of justice by the courts, and, in many jurisdictions, the writ has become obsolete, and a writ of mandamus may be issued instead. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

A writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear, non-discretionary duty. The object of a writ of mandamus is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Hartman v. Mailo, 21 FSM R. 657, 659-60 (Chk. S. Ct. Tr. 2018).

A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. As the land commission occupies a semi-judicial role, a writ of mandamus may be directed to a Land Commissioner's decisions as well. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

– Procedure

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).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

When an amended petition for writ of mandamus is filed, the petitioner will be limited to briefing the issues raised in its original petition for writ of mandamus, not the issues raised in its amended petition, and the amended petition will be designated as a case with a different docket number. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 (App. 2003).

An amended petition for a writ of mandamus is considered a separate petition for writ of mandamus involving the same parties. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 440 (App. 2003).

When an application has been made for a writ of mandamus or prohibition directed to an FSM Supreme Court judge the remaining article XI, section 3 FSM Supreme Court justice(s), acting as the appellate division, are eligible to consider the petition. If the remaining fulltime justice(s) are of the opinion that the writ clearly should not be granted, they shall deny the petition. Otherwise, they shall order that an answer be filed. McIlrath v. Amaraich, 11 FSM R. 502, 504 (App. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

When the court refused to allow the original petition for a writ of mandamus to be amended and provided that the amended petition would be considered a separate petition involving the same parties, the petitioners' pursuit of the petition after the order denying amendment did not make the original petition frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

The FSM Supreme Court Director of Court Administration is a court officer who may properly be the subject of a writ of prohibition when no other adequate remedy presents itself since a specially assigned justice's handling of cases specially assigned to him is not possible in the absence of certain administrative steps on the Director's part. Accordingly, the Court Director can properly be named a respondent. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

A respondent justice, as is his right under Appellate Procedure Rule 21(b), may file a letter

that he does not wish to participate further in the prohibition proceeding against him. Nikichiw v. O'Sonis, 13 FSM R. 132, 134-35 (Chk. S. Ct. App. 2005).

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).

A motion to stay proceedings pending consideration of a petition for a writ of mandamus concerning a lawyer's representation is denied when there: 1) is no substantial possibility that an appellate panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented that favor a stay. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When 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).

A petition for a preemptory writ, such as prohibition or mandamus, is an expedited procedure that does not usually require the certification of a trial court record, or extended briefing, or even a transcript, or oral argument. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

It is unclear whether a complaint and summons must be served with a petition for a writ of mandamus, but, service of the petition was defective because a summons should have been issued and served. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

The Legislature is not an indispensable party when a petition seeks a writ commanding the State Election Commission to perform an act, not the Legislature to perform an act. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited procedure pertinent to that form of relief. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Under Appellate Rule 21, if the appellate division is of the opinion that a writ of prohibition clearly should not be granted, it must deny the petition. Otherwise, it must order that an answer be filed. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App.

2014).

The FSM Supreme Court appellate division may, in the interest of judicial economy, determine if a petition for a writ of mandamus that should have been filed in the trial division clearly should not be granted. If it is of the opinion that the writ clearly should not be granted, it will deny the petition, but if there is any doubt, it will dismiss the petition without prejudice so that the petitioner could file in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

A writ of mandamus petition will be dismissed without prejudice when the named respondent is the Chuuk State Supreme Court trial division because it is not a public officer – it is a public office. To meet the mandamus requirement of a public officer, the trial judge should be the named respondent. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

A petition for a writ of mandamus will be dismissed when the named respondent is the Chuuk State Election Commission because it is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Director and Commissioners should have been named as respondents. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 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).

When the previous application for a writ of prohibition was denied without prejudice because of various deficiencies in the application and a second application for a writ of prohibition is filed, the court clerks will assign it the next available appellate docket number since it is a new application. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

The appellate rules require that a petition for a writ of prohibition be accompanied by proof of service on the respondent judge or justice and on all parties to the action in the trial court. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Since Appellate Rule 21(a) requires that a petition for a writ of prohibition contain copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition, that would, at a minimum, be the trial judge's written order denying her recusal and the reasons for that denial or, if the denial was oral, a transcript of that denial. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 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).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When a new FSM Supreme Court associate justice has taken the oath of office and is not disqualified, he, as the remaining article XI, section 3 FSM Supreme Court justice is eligible to consider a petition for a writ of prohibition and he alone could deny that petition. But when a specially assigned justice has already sat on the appeal case since his designation in March 2016, both the specially assigned justice and the remaining article XI, section 3 justice will constitute the appellate division for the case. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing.

Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

The burden of proof lies with the party seeking the writ of mandamus; they must show that the right to issuance of the writ is clear and indisputable. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

– When May Issue

Where there is no evidence of arbitrary or capricious conduct, the Pohnpei Supreme Court will decline to issue a writ of mandamus compelling the State Legislature to exercise discretionary legislative functions, even though the State Constitution expressly commands the performance of those functions. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 11 (Pon. S. Ct. Tr. 1985).

When a justice is called upon to alter the conduct of a trial judge in a state court before that court has completed proceedings and reached a final decision in a case, the pertinent inquiry is whether or not special circumstances exist so as to render the matter rare and exceptional for issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 46-47 (Pon. 1993).

A request for mandamus so as to avoid a long and costly appeal does not present rare and exceptional circumstances so as to warrant issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 47 (Pon. 1993).

Where the most the petitioner alleges is that the trial justice committed gross legal error and where the matter is already on appeal a writ of mandamus will not issue because it was not shown that the trial justice breached a duty, ministerial in nature, or that he had engaged in a clear abuse of power. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 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).

Since a prerequisite to the issuance of a writ of mandamus is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

Where a properly filed notice of appeal has transferred jurisdiction to the appellate court and the trial court is about to conduct either a hearing on a preliminary injunction or a trial on the merits of the case which is the same as those on appeal, it is proper for an appellate court to issue a writ of prohibition to prevent further action by the lower court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Where an inferior court has acted in excess of its jurisdiction a writ of prohibition is proper to confine it to its proper role. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App.

1994).

When a court has concluded that the inferior court has acted or is about to act in excess of its jurisdiction the next requirement for the writ of prohibition to issue is that a harm or injury will result from the inferior court's action. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Where the Election Commissioner is in the untenable position of being subject to the inconsistent orders of two trial division courts because either order he chooses to obey will cause him to be in violation of the other order and where one trial court's assumption of jurisdiction also interferes with the order and regularity of the judicial proceedings because the same issues affecting the same parties cannot be decided at the same time by a trial division court and the appellate division, it is proper for a writ of prohibition to issue. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

When the Election Commissioner is caught between the two competing and inconsistent orders of courts of the same rank, and has pursued the only legal remedy available to him by objecting to the second court's jurisdiction, it is proper for a writ of prohibition to issue to confine the second court to its proper role because the Commissioner has no other plain, speedy or adequate legal remedy. Election Comm'r v. Petewon, 6 FSM R. 491, 501 (Chk. S. Ct. App. 1994).

The writ of mandamus is an extraordinary remedy designed to prevent public officials from committing clear abuses of power. As such, mandamus relief cannot be used as a precaution against future events that may never occur. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563-64 (Pon. 1994).

A writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty to which the petitioner has an indisputable right, and it may not be issued for the purpose of requiring a public official to carry out an act that is not within his authority. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 622 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 624 (Pon. 1994).

A writ of prohibition will only issue to prevent an inferior court or tribunal from acting without or in excess of its jurisdiction. It must be directed to a court or tribunal inferior in rank to the one issuing the writ. As a general rule, it cannot issue from one court to another of equal rank. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy and adequate remedy otherwise available that has not been exhausted. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition will not issue to disqualify an FSM Supreme Court justice where the party seeking disqualification has not filed a motion to disqualify or recuse to be considered by the justice whose disqualification is sought. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10

(App. 1995).

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).

The central issues of law presented by an application for a writ mandamus are whether the act sought to be compelled is one that is ministerial or non-discretionary and whether the act is one which the respondent as a judicial or other public officer has a clear legal duty to perform. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (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).

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

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).

Mandamus will lie to require the performance of a clear non-discretionary duty, or to prevent a clear abuse of power, but it does not lie to control judicial discretion, except when that discretion has been abused. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

As with other extraordinary writs, mandamus will not issue unless no other adequate remedy is available. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78

(App. 1997).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

When a petition for mandamus to order the respondent to sell land does not identify the property, the right which the writ seeks to enforce is not sufficiently specific, well defined, and complete to justify the extraordinary remedy of mandamus. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

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).

A court may issue a writ of mandamus when the petitioner has met its burden to show that its right to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Because no statute or regulation requires the Attorney General or Director of Administration to explain his decision to deny the request for hazardous pay differential, it is not a non-discretionary or ministerial act. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus on an interlocutory basis except in those rare and exceptional cases when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

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Only under special circumstances should the Appellate Division issue a writ of mandamus to alter the conduct of the trial judge before the trial court has completed proceedings and reached a final decision. The object of the requirement is to prevent piecemeal litigation which would result from the use of interlocutory appeals. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 n.4 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party petitioning for a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

When, although a review of the record would appear to indicate that adequate notice and opportunity to be heard were provided, the issue of whether the petitioner had notice and an opportunity to be heard is one that is properly raised on appeal from a final judgment or order. That is its remedy at law and the petition will be denied when petitioner has not shown that this remedy is unavailable or inadequate, or that the extraordinary circumstances exist for the issuance of a peremptory writ and it has not provided compelling justification and the court does not find the exceptional circumstances that would justify the issuance of the extraordinary writ of mandamus necessitating review before a final judgment below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A writ of prohibition may issue when a court or court officer is about to engage in judicial or quasi-judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

Since the sole issue before an appellate panel considering a writ of prohibition directed against one judge is whether the petitioner has established that that judge must be prohibited from acting in a particular case, not whether some other judge may also be disqualified, a challenge to another judge's authority to act must be brought up in some other proceeding. Nikichiw v. O'Sonis, 13 FSM R. 132, 136-37 (Chk. S. Ct. App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government's removal of that case to the FSM Supreme Court does not affect the court's jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that

court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since the issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O'Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. The writ will usually not issue unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

One instance where it is appropriate to issue a writ of prohibition is when a trial court justice is about to exercise unauthorized power without or in excess of his jurisdiction by exercising jurisdiction over a case where another judge already has jurisdictional priority over the parties and the issues. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When a trial judge's presiding over a case is in excess of his jurisdiction since another trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices, when the petitioner objected to that judge's exercise of jurisdiction from the start, and when the petitioner will be injured if the writ does not issue since he will be subject to conflicting and contradictory orders from two different trial division justices, there is no plain, speedy, or adequate remedy otherwise available and the writ of prohibition will accordingly issue. Nikichiw v. O'Sonis, 13 FSM R. 132, 138-39 (Chk. S. Ct. App. 2005).

A due process violation may be remedied through means other than a writ of prohibition, such as a direct appeal. A writ of prohibition is not a writ of right and cannot lie when there is a plain, speedy, and adequate remedy otherwise available which has not been exhausted. The court's job is simply to determine whether the respondent has acted without, or in excess of, his jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 183 n.2 (Chk. S. Ct. App. 2006).

In order for the extraordinary writ of prohibition to issue when a justice has denied a motion to recuse or disqualify, it must be an abuse of discretion for a justice not to recuse him- or herself. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

If the extraordinary writ of prohibition may issue where a justice has abused his discretion in ruling on a disqualification motion, it must likewise issue where a justice has patently disregarded a mandate which stripped him of any discretion to act in the first instance. Ruben v. Petewon, 14 FSM R. 177, 184 (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).

The extraordinary writ of prohibition will lie where a trial justice exercises jurisdiction over a

case wherein another justice has jurisdictional priority over the parties and issues. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A writ of prohibition is proper when a trial justice interferes with the appellate division's jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A justice's acts after a single appellate justice issued a stay that were not acts taken in aid of the appeal, but were acts designed to frustrate or nullify the appeal process and the respondent justice's interference with the jurisdiction of, and blatant disregard for a stay entered by, a justice having greater jurisdictional authority supports the conclusion that he must be prohibited from taking any further action in the case. Ruben v. Petewon, 14 FSM R. 177, 186-87 (Chk. S. Ct. App. 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).

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 a trial court's decision to disqualify an attorney from participation in a given case is a decision falling within a trial court's inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court's discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

A writ of prohibition will usually not be issued such a unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 37

(Chk. S. Ct. App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

The extraordinary writ of prohibition is to be issued with great caution, but it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Nikichiw v. Petewon, 15 FSM R. 33, 39 (Chk. S. Ct. App. 2007).

When certain issues raised are merely allegations of gross legal error which may be properly addressed by an appeal (and are already the subject of an appeal) and since a writ of prohibition can only be issued to confine a lower tribunal to its proper jurisdiction and is not a substitute for an appeal, those issues are not the proper subject for a petition for a writ of prohibition. A writ of prohibition will not lie to correct those alleged legal errors no matter how gross the error or how meritorious the petitioners' legal arguments. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Since an order in aid of judgment to seize municipally-owned vehicles acted as an execution on public property, it is clearly and indisputably an attempt to exercise power in excess of the court's jurisdiction, that is, it is a power specifically denied to courts by the Chuuk Judiciary Act. Since the trial court justice had no discretion in the matter – he had no power to order the vehicles' seizure and since the petitioners have no plain, speedy or adequate legal remedy for this judicial act in excess of the court's jurisdiction and writ of prohibition will issue. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

When issuance of a writ of prohibition without a further affirmative command to return the unlawfully seized property to the registered owner would not constitute adequate relief, and would leave the petitioner without any plain, speedy or adequate legal remedy and since the trial court was completely without jurisdiction to issue an order in aid of judgment executing on public property, to correct the results of that excess, the appellate court must order the return of the seized property. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

When a trial justice makes no rulings on the motion to stay before him, he fails to exercise whatever discretion he may have had to rule on it because a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time and since the trial judge neglected his duties by ignoring the motion to stay and further abused his discretion by failing to rule on it before issuing an order in aid of judgment, the appellate court issuing a writ of prohibition barring the order in aid of judgment will stay any enforcement of the judgment until the appeal of the judgment has been decided. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

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).

Whether sufficient funds are already appropriated to conduct a runoff election is not a ground to deny the petition. The lack of funds to perform a required duty is a problem to be solved by the political branches of government, not the court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The State Election Commission cannot refuse to hold an election because it has insufficient funds. If it refuses to hold an election on that ground, it is clear that, if sought, a writ of mandamus would issue to command that the election be announced and held. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If the State Election Commission has a duty to announce and conduct a runoff election, that duty can only be ministerial and non-discretionary. The State Election Commission does not have the discretion to choose whether to conduct an election or not. Its duty to conduct elections is mandated by the Constitution. Thus, whether the petitioner is entitled to a writ commanding the respondent Election Commission to announce (and conduct) a runoff election to fill the Governor's office depends solely on the meaning of the relevant provisions of the Chuuk Constitution. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

It is a clear non-discretionary duty for the State Election Commission to conduct a runoff election if, during the general election, no ticket of candidates for Governor and Lieutenant Governor receives a majority of the votes cast. However, in a special gubernatorial election to fill a vacancy, the candidates do not run on tickets. They run alone for the office of governor. The Section 7 provision for runoff elections applies to tickets of candidates, not to single candidates. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21-22 (Chk. S. Ct. Tr. 2011).

The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

A writ of prohibition may issue when a court is about to engage in judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Whether to grant a writ of prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

When there is no basis for the court to depart from the procedures established for a stay to be put in place pending an appeal since the petitioner has other adequate remedies to obtain what he seeks and since the petitioner, who is also seeking an extraordinary writ of prohibition, has not met his burden to show that his right to the writ is clear and indisputable, the petition for a writ of prohibition will be denied. Ehsa v. Johnny, 19 FSM R. 175, 178 (App. 2013).

A petition for a writ of prohibition will be denied when any legal error or even gross legal error in striking the response brief is correctable by a pending or a future appeal. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

When the respondent Kosrae State Court Chief Justice has not acted without jurisdiction or in excess of his jurisdiction, a writ of prohibition clearly should not be granted. Tilfas v. Aliksa, 19 FSM R. 181, 184 (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. Aliksa, 19 FSM R. 191, 194-95 (App. 2013).

When there appears to be no legal grounds, let alone a clear duty that the Kosrae Chief Justice not appoint himself a Land Court temporary judge to preside over a Land Court case, a writ of prohibition clearly should not be granted. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A petition for a writ of mandamus clearly should not be granted when a factual record will need to be developed and questions of fact are best determined in the trial division; when the voluntary payment rule may bar the recovery of taxes; when the FSM may also be able to prove statute of limitations defenses for some or all of the tax payments; when the petitioner has appealed the Secretary's denial of the relief sought and that appeal should afford it a plain, speedy, and adequate remedy and a forum in which it may prove its right to relief and the extent of that relief; and because a writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy, and adequate remedy otherwise available that has not been exhausted. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

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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).

The court may issue a writ of prohibition only when the party seeking a writ has met his burden to show that his right is clear and indisputable. Halbert v. Manmaw, 20 FSM R. 245, 249, 250 (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 the 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).

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).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

A petition for a writ of prohibition will be denied when the petitioner's new points do not buttress its position, but instead further support the court's earlier denial of its previous petition. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

A party seeking the extraordinary and exceptional remedy of a writ of prohibition must show that the party's right to the writ is clear and indisputable and that all of the following five elements are satisfied: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to have performed that act; and 5) there must be no other adequate legal remedy available. Peterson v. Anson, 20 FSM R. 657, 658-59 (App. 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).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the case's time delays have been excessive; when, under the Chuuk Rules of Appellate Procedure, the Chuuk State Supreme Court appellate division is prepared to consider cases on the merits promptly after briefs are filed; and when the FSM Supreme Court appellate division, although it has been dilatory, can see no reason why Chuuk State Supreme Court appellate division appeal should not be set for argument, it will, considering the possibility there might be a reason and out of deference to the Chuuk State Supreme Court appellate division, defer action for sixty days, and, if, within that sixty days, the Chuuk State Supreme Court appellate division has held oral argument on all pending matters or if that court has fixed oral argument on a date certain in the near future, it will not issue the writ of procedendo or mandamus. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 586 (App. 2018).

When a court has jurisdiction to grant writs of mandamus in a matter, there are five elements that must be met: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Hartman v. Mailo, 21 FSM R. 657, 660, 661 (Chk. S. Ct. Tr. 2018).

The Senior Land Commissioner is a public officer who oversees the Land Commission and who has the non-discretionary legal duty to issue a certificate of title to persons holding an interest in the land pursuant to the determination after the 120-day time limit for appeal has expired without an appeal. The Land Commission's continuous failure to issue a certificate of title for over 37 years following an un-appealed determination of ownership constitutes a breach of its duty and leaves the petitioner without any legal remedy other than to petition for a writ of mandamus, and to prevent this manifest injustice, equity requires that the court compel the Land Commission to fulfill its legal duty to issue a certificate of title to petitioner. Hartman v. Mailo, 21 FSM R. 657, 661 (Chk. S. Ct. Tr. 2018).