

**RULES OF CIVIL PROCEDURE
FOR THE STATE COURT OF YAP**

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**RULES OF CIVIL PROCEDURE
FOR THE STATE COURT OF YAP¹**

I. Scope of Rules – One Form of Action

Rule 1. Scope of Rules²

These rules govern the procedure in the State Court of Yap in all suits of a civil nature whether cognizable as cases at law, or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every dispute with due recognition to be given to the traditions and customs of the people of the State of Yap.

Rule 2. One Form of Action

There shall be one form of action to be known as “civil action”.

II. Commencement of Action, Service of Process, Pleadings, Motions, and Orders

Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court.

Rule 4. Process³

(a) Summons: Issuance. Upon filing of the complaint the clerk of court shall forthwith issue a summons and deliver it for service to a policeman or to any other person authorized by Rule 4(c) to serve it. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

(b) Summons: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff’s attorney or trial counselor, if any, otherwise the plaintiff’s address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Service of process shall be made by a policeman or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely.

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual, other than a person younger than 14 years old or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies of the summons at his dwelling house or usual place of residence or of business with some person of suitable age and discretion then residing or employed therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. Reasonable attempts shall also be made by the person serving the summons and complaint to inform the person served that the

summons and complaint are important documents issued by the court that require prompt attention and response.

(2) Upon a person younger than 14 years old, by serving the summons and complaint to that person's parent or guardian. Upon an incompetent person, by serving the summons and complaint upon the guardian of the person, if any, or upon the person or agency to which the incompetent has been committed.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the Government of the State of Yap, by delivering a copy of the summons and of the complaint to the Governor of the State of Yap, and in any action attacking the validity of an order of an officer or agency of the Government of the State of Yap not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the Government of the State of Yap, by serving the Governor of the State of Yap and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by these rules for the service of summons or other like process upon any such defendant.

(e) Summons: Service upon Party Not Inhabitant of or Found Within State. Whenever a law of the State of Yap or an order of court thereunder provides for service of a summons, or of a notice, or of an order in place of summons upon a party not an inhabitant of or found within the State of Yap service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a law or rule of court of the State of Yap provides (1) for service of a summons, or of a notice, or of an order in place of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the law or rule.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the State of Yap, and, when authorized by law or by these rules, beyond the territorial limits of the State of Yap. A subpoena may be served within the territorial limits provided in Rule 45.

(g) Return.

(1) Return Within State. The person serving process within the State of Yap shall make proof of service thereof to the court promptly and in any event within the

time during which the person served must respond to the process. If service is made by a person other than a policeman, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

(2) Return Out of State. Where service is upon a party not an inhabitant of or found within the State of Yap, an affidavit of the server shall be filed with the State Court stating the time, manner, and place of service. The court may consider the affidavit or any other competent proofs in determining whether service has been properly made.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When the state law referred to in subdivision (e) of this rule authorizes service upon a party not living or found within the State of Yap and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) Return. Proof of service may be made as prescribed by subdivision (g)(2) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Rule 5. Service and Filing of Pleadings and Other Papers⁴

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney or trial counselor the service shall be made upon the attorney or trial counselor unless service upon the party himself is ordered by the court. Service upon the attorney or trial counselor or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney, to the trial counselor or to the party; leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it at his dwelling house or usual place of residence with some person of suitable age and discretion then residing in the home. Service by mail is complete upon mailing.

(c) Service: Numerous Defendants. In any action that involves an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies to them need not be made as between the defendants and that any cross-claim, counter-claim, or matter making up an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative order that depositions upon oral examinations and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the justice may permit the papers to be filed with him, in which event he shall note on the papers the filing date and immediately transmit them to the office of the clerk.

Rule 6. Time⁵

(a) Computation. In computing any period of time under these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes any day so authorized by the laws of the State of Yap.

(b) Enlargement. When by these rules or by a notice given under these rules or by order of court an act is required or allowed to be done at or within a specific time, the court for good reason shown may at any time in its discretion (1) with or without motion or notice, order the period lengthened if such a request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act

was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Vacant. (Unaffected by Expiration of Terms) (Rescinded)

(d) For Motions – Affidavits. A written motion shall be served with a memorandum of points and authorities. When a motion is supported by affidavit, the affidavit shall be served with the motion. Unless otherwise specified by Yap State Court Rules or a law of the State of Yap, the Court shall schedule a hearing on the motion once it is filed if a party so requests. Such hearing shall be scheduled no sooner than 14 days after the motion is filed, unless the court orders otherwise.

The party opposing the motion shall not later than 10 days after the service of the motion upon him, file and serve responsive papers. When a motion is opposed by affidavit, the affidavit shall be served with the responsive papers. The responsive papers shall consist of either (1) a memorandum of points and authorities, or (2) a written statement that he will not oppose the motion.

(e) Additional Time after Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 7 days shall be added to the prescribed period.

III. Pleadings and Motions

Rule 7. Pleadings Allowed; Form of Motions⁶

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds for it, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(A) Memorandum of Points and Authorities. Every motion shall be accompanied by a memorandum of points and authorities which fairly discusses the issues presented by the motion. If the respondent opposes the motion, he shall file a memorandum of points and authorities which fairly discusses the issues presented and responds to the arguments of the movant.

(B) Hearing and Notice. Unless a motion can be properly disposed of ex parte, the court shall hold a hearing on every motion prior to disposition thereof if a party so requests, unless otherwise specified by Yap State Court Rules or a law of the State of Yap.

(C) Sanctions. Failure of attorney or trial counselor for a party to file the required memorandum of points and authorities may, in the discretion of the court, subject the defaulting counsel to the imposition of sanctions, including refusal by the court to hear counsel at the hearing, postponement of the hearing until the memorandum is prepared and filed, waiver by the moving party of the motion, or consent to the granting of the motion if counsel for the opposing party fails to file the memorandum of points and authorities.

(2) Unless otherwise ordered by the court, parties must file an original and one copy of all documents filed with the court pursuant to these rules. The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8. General Rules of Pleadings⁷

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleadings to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading Special Matters⁸

(a) Capacity. It is not necessary to aver the capacity of a party to sue, or be sued or the authority, of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Vacant. (Admiralty and Maritime Claims)

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but

in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraph; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11. Signing of Pleadings⁹

Every pleading of a party represented by an attorney or trial counselor shall be signed by at least one counsel of record in his individual name, whose physical address, telephone number, and e-mail address, if any, shall be stated. A party who is not represented by an attorney or trial counselor shall sign his pleading and state his address. The signature of a counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For wilful violation of this rule a counsel may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Rule 12. Defenses and Objections - When and How Presented By Pleading or Motion - Motion or Judgment on the Pleadings¹⁰

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a law of the State of Yap, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 30 days after being served with the summons and complaint;

(B) A party must serve an answer to a counterclaim or crossclaim within 30 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 30 days after being served with an order to reply, unless the order specifies a different time.

(2) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading.

(g) Joining Motions.

- (1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.
- (2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under

this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State of Yap. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Yap or an officer or agency of the State of Yap.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice required, he may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Person other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-Party Practice¹¹

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 10 days after serving its original answer. The third-party defendant, the person served with the summons and third-party complaint, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and crossclaims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings¹²

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 30 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 30 days after service of a responsive pleading or 30 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or

(B) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(A) is satisfied and within the period provided by law for commencing the action against him the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) The delivery or mailing of process to the Governor of the State of Yap or an agency or officer who would have been a proper defendant if named, satisfies the

requirements of Rule 15(c)(1)(B)(1) and (2) with respect to the government of the State of Yap or any agency or officer thereof to be brought into the action as a defendant.

Rule 16. Pre-Trial Procedure: Formulating Issues¹³

In any action, it shall be mandatory for the attorneys or trial counselors for the parties to appear before it for a conference, unless the justice and both parties agree that there is no need for such conference. When a conference is held the parties may consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The possibility of resolving the dispute through due recognition of the traditions and customs of the people of the State of Yap; and
- (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

IV. Parties

Rule 17. Parties Plaintiff and Defendant: Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the State of Yap so provides, an action for the use or benefit of another shall be brought in the name of the State of Yap. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Vacant. (Capacity to Sue or Be Sued)

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Rule 18. Joinder of Claims and Remedies¹⁴

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)–(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)–(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be

interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) Vacant. (Interpleader)

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Actions to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his attorney or trial counselor.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be

combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Rule 23.1. Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the State of Yap which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 23.2. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the State of Yap confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the State of Yap confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a national or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the State of Yap gives a right to intervene. When the constitutionality of a law of the State of Yap affecting the public interest is drawn in question in any action to which the State of Yap or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the State of Yap.

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party and, together with the notice of hearing, shall be served on the parties in the manner provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

V. Depositions and Discovery

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim, or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of the persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by, or for another party or by or for that other party's representative (including his attorney, trial counselor, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a counsel, or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement response may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys or trial counselors for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the counsel for any party if the motion includes;

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the counsel making the motion has made a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion. Each party and his counsel are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the counsel for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served on all not later than 10, days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively, identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in the State Court of Yap may file a verified petition in the Trial Division of the State Court of Yap. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in the State Court of Yap but is presently unable to bring it or cause it to be brought, (B) the subject matter of the expected action and his interest therein, (C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and (E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney or trial counselor who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rule 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the state court, it may be used in any action involving the same subject matter subsequently brought in the Trial Division of the State Court of Yap, in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the Trial Division of the State Court or before the taking of an appeal if the time therefore has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Trial Division. In such case the party who desires to perpetuate the testimony may make a motion in the Trial Division for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Trial Division. The motion shall show

(1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon (cf. #9 of comments).

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the State of Yap and the rest of the Federated States of Micronesia. Within the State of Yap and the rest of the Federated States of Micronesia depositions shall be taken before an officer authorized to administer oaths by the laws of Yap or of the state where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rule 30, 31, and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the State of Yap, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)". Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the State of Yap under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or trial counselor of any of the parties, or is a relative or employee of such counsel, or is financially interested in the action.

Rule 29. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

Rule 30. Depositions upon Oral Examination

(a) When Depositions May be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.

Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon and defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination; General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Yap, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney or trial counselor shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under subdivision (c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e) and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1) and 45(d), a deposition taken by telephone is taken in the state and at the place where the deponent is to answer questions propounded to him.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness,

unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the state court or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them he may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person by counsel pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his counsel in attending, including reasonable counsel fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person, by counsel because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him, his counsel in attending, including reasonable counsel fees.

Rule 31. Depositions upon Written Questions

(a) Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The

attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of the deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 50 miles from the place of trial or hearing, or is out of the State of Yap, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due

regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and when an action has been brought in the State Court of Yap and another action involving in the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as of originally taken therefor. A deposition previously taken may also be used as permitted by the Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Vacant. (Abrogated)

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality to testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by

the officer under Rule 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 33. Interrogatories to Parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or trial counselor making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection or such business records, including a compilation, abstract of summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of Documents and Things and Entry upon Land or Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and other data compilations from which information can be obtained, translated,

if necessary, by the respondent through detection devices into reasonably useable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related act.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Rule 35. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or medical officer to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician or medical officer setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made,

of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician or medical officer fails or refuses to make a report, the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or medical officer or the taking of a deposition of the physician or medical officer in accordance with the provisions of any other rule.

Rule 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of an admission shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party, his attorney or trial counselor, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted

or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purposes nor may it be used against him in any other proceeding.

Rule 37. Failure to Make Discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court on matters relating to a deposition. An application for an order to a deponent who is not a party shall be made to the court.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party, attorney or trial counselor advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including counsel fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court shall, after opportunity for hearing, require the moving party, the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including counsel fees, unless the court finds that the making of the motion was

substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) Sanctions by the Court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) Sanctions by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order under Rule 26(f), the court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts or further proceedings until the order is obeyed, or dismissing the action or proceeding or any part or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order, the counsel advising him or both to pay the reasonable expenses, including counsel, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable counsel fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act, the counsel advising him or both to pay the reasonable expenses, including attorney or trial counselor fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Subpoena of Citizen of the State of Yap in Foreign Country.

(1) Witness. The State Court may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a citizen of Yap who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

(2) Time, Place and Service. The subpoena shall designate the time and place for the appearance or for the production of the document or other thing. Service of the subpoena shall be effected in accordance with the provisions of the Rules of Civil Procedure relating to service of process on a person in a foreign country. The person serving the subpoena shall tender to the person to whom the subpoena is addressed his estimated necessary travel and attendance expenses, the amount of which shall be determined by the court and stated in the order directing the issuance of the subpoena.

(f) Expenses Against the State of Yap. Except to the extent permitted by statute, expenses and fees may not be awarded against the State of Yap under this rule.

(g) Failure to Participate in the Framing of a Discovery Plan. If a party, his counsel fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party, his counsel to pay to any other party the reasonable expenses, including counsel fees, caused by the failure.

Rule 38. Vacant (Jury Trial of Right)¹⁵

Rule 39. Vacant (Trial by Jury or by the Court)¹⁶

Rule 40. Assignment of Cases for Trial¹⁷

The Trial Division may provide by rule for the placing of actions upon the trial calendar (a) without request of the parties or (b) upon request of a party and notice to the other parties or (c) in such other manner as the court deems expedient. Precedence shall be given to action entitled thereto by any statute of the State of Yap.

Rule 41. Dismissal of Actions¹⁸

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; By Stipulation. Subject to Rule 23(e), Rule 66 and any statute of the State of Yap, an action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a court of the State of Yap or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specified, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as judgment upon the merits.

(c) Dismissal of Counterclaim Cross-Claim or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in state court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Case Progression.

(1) The Yap State Court, upon its own motion or the motion of any party, may dismiss an action or a claim with prejudice where a party has failed to take any action of record within two (2) years from the filing of such action or claim.

(2) The Yap State Court, upon its own motion or the motion of any party, may dismiss a case without prejudice if the party filing the action or asserting the claim has failed to take any action of record within the previous one hundred and eighty (180) days. A party whose action has been dismissed under this subsection may move for reinstatement of the case, and upon good cause shown, the Yap State Court shall reinstate the case.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 43. Taking of Testimony

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules or by the Rules of Evidence.

(b) Vacant. (Abrogated)

(c) Vacant. (Recorded of Excluded Evidence - Abrogated)

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

Rule 44. Proof of Official Record¹⁹

(a) Authentication.

(1) Domestic. An official record kept within the State of Yap, National Government of the Federated States of Micronesia, or any other state thereof, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the national government, of a state, or of a political subdivision in which the record is kept, authenticated by the seal of the court, or

may be made by any public officer having a seal of office and having official duties in the national, state or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. An official record found outside the State of Yap and the Federated States of Micronesia, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy of it, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) if any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul vice consul, or consular agent of the Federated States of Micronesia, or of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the Federated States of Micronesia or to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) For attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place specified in the subpoena. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed, to hand over books, papers, documents, or tangible things designated in the subpoena; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the

motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by the police, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. Reasonable attempts shall be made to inform the person served with the subpoena, that the subpoena is an important document from the court that requires prompt attention and response.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of court of subpoenas for the persons named or described therein. Proof of service may be made by filing with the clerk of court a copy of the notice together with a statement of the date and manner of service and of the names of the persons served; certified by the person who made service. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b) but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 20 days after service, serve upon the attorney or trial counselor designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) The court, upon motion made promptly, may quash or modify the subpoena if it is unreasonable or oppressive to the person it is directed to in regard to the place where the deposition is proposed to be taken.

(e) Subpoena for a Hearing or Trial. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Yap. The court, upon motion made promptly, may quash or modify the subpoena if it is unreasonable or oppressive to the person it is directed to in regard to the travel involved to the place of the hearing or trial.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court.

Rule 46. Objecting to a Ruling or Order²⁰

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Rules 47.–51. Vacant (Dealing with Jury)

Rule 52. Findings by the Court

(a) Effect. In all actions the court shall find the facts specially and state separately its conclusions of law on it, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which make up the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 and 56 or any other motion except as provided in Rule 41(b). Attorneys or trial counselors shall submit proposed findings of fact and conclusions of law upon direction of the court.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. The question of the sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made an objection in the Trial Division to such findings or has made a motion for judgment.

Rule 53. Masters

(a) Appointment and Compensation. The court in which any action is pending may appoint a special master. As used in these rules the word “master” includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. Except in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master’s report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper, for the efficient performance of his duties under the order. He may require the production of all evidence upon matters included in the reference, including the production of all books, papers, vouchers, documents, and writings applicable to the reference. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself question them and may call the parties to the action and question them under oath. When a party so requests, the master shall make a record of the evidence offered and excluded

in the same manner and subject to the same limitations as provided in Rule 103 of the Rules of Evidence.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall promptly furnish the master with a copy of the order of reference. Upon receipt of the reference, unless the order of reference otherwise provides, the master shall promptly set a time and place for the first meeting of the parties or their attorneys or trial counselors to be held within 20 days after the date of the order of reference and shall notify the parties or their counsels. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, cancel the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may obtain the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without good excuse a witness fails to appear or give evidence, he may be punished for contempt and be subjected to the consequences, penalties, and remedies provided in Rule 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items in it to be proved by oral questioning of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(1) Contents and Filing. The master shall prepare a report on the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall write them out in the report. He shall file the report with the clerk of court, and shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall promptly mail, personally serve, or deliver to all parties notice of the filing.

(2) Objections to Report. The court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report, any party may serve written objections to the report upon the other parties. Application to the court for action upon the report and upon objections to the report shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may change it or reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) Vacant. (Jury Actions)

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate

that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of getting suggestions.

VII. Judgment

Rule 54. Judgments; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provision therefor is made either in a statute of the State of Yap or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State of Yap, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

Rule 55. Default²¹

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the court shall enter his default. No default shall be entered until the expiration of at least 30 days after service.

(b) Judgment. Judgment by default may be entered as follows:

(1) For a Sum Certain. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) For All Other Cases. In all other cases the party entitled to a judgment of default must apply to the court for a default judgment; but no judgment by

default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial to the parties when and as required by any law of the State of Yap.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b). A default judgment rendered on service may be set aside only on a showing of good cause which would be timely and sufficient to set aside a default judgment entered upon personal service within the state.

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the State of Yap. No judgment by default shall be entered against the State of Yap or an officer or agency of the State of Yap unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be governed by the provisions of Rule 6(d). The party opposing the motion must, in the same manner, observe the provisions of Rule 6(d). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without

substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts of them referred to in an affidavit shall be attached to the affidavit or served with it. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall immediately order the party employing them to pay to the other party the amount or the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney or trial counselor fees, and any offending party, counsel may be adjudged guilty of contempt.

Rule 57. Vacant (Declaratory Judgment)

Rule 58. Entry of Judgment²²

Subject to the provisions of Rule 54(b): (1) upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court shall promptly prepare, sign, and enter the judgment; (2) upon a decision by the court granting other relief, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. A judgment is effective only when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys or trial counselors shall submit forms of judgment upon direction of the court.

Rule 59. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for manifest error of law or fact, or for newly discovered evidence. On a motion for a new trial the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for Servicing Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Appellate Division, and thereafter while the appeal is pending may be so corrected with the permission of the Appellate Division.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for, vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every

stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exception - Injunctions and Receiverships. Except as stated in this rule, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or For Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings, to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the State of Yap or an Agency Thereof. When an appeal is taken by the government of the State of Yap or an officer or agency of the State of Yap or by direction of any department of the government of the State of Yap and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Vacant. (Stay According to State Law)

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of the appellate division or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of the appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Disability of a Justice

If by reason of death, sickness, or other disability, a justice before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after findings of fact and conclusions of law are filed, then any other justice regularly sitting in or assigned to the court may perform those duties; but if such other justice is satisfied that he cannot perform those duties, because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State of Yap, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the State of Yap governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a municipal court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

Rule 65. Injunctions²³

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing with Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party, his attorney or trial counselor only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party, his attorney or trial counselor can be heard in opposition, and (2) the applicant's counsel certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed promptly in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older

matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 3 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. The court may require a movant to give security in an amount the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained before issuing a preliminary injunction or a temporary restraining order. No such security shall be required of the State of Yap or of any officer or agency thereof.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Vacant. (Employer and Employee; Interpleader; Constitutional Cases)

Rule 65.1. Security: Proceedings Against Sureties

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall promptly mail copies to the sureties if their addresses are known.

Rule 66. Receivers Appointed by Courts

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. An action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit in Court²⁴

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing.

Money paid into court under this rule shall be promptly deposited by the clerk in a bank licensed to do business in the State of Yap in the name and to the credit of the court.

No money deposited shall be withdrawn except by order of the court.

Rule 68. Offer of Judgment

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine cost. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by finding or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 69. Execution²⁵

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with these rules except that any law of the State of Yap governs to the extent it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) Vacant. (Against Certain Public Officers)

Rule 70. Judgment for Specific Acts; Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the State of Yap, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Rule 71. Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Rule 71A. Vacant (Condemnation of Property)

IX. Appeals

X. Courts and Clerks

Rule 77. Courts and Clerks²⁷

(a) Courts Always Open. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trial and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a justice in chambers, without the attendance of the clerk or other court officials and at any place within the State of Yap.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the Clerk or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgment. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Rules of Appellate Procedure.

Rule 78. Submission on Briefs in Lieu of Oral Hearing²⁸

(a) Providing a Regular Schedule for Oral Hearings. A court may establish regular times and places for oral hearings on motions.

(b) Providing for Submission on Briefs. By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings.

Rule 79. Books and Records Kept by the Clerk and Entries Therein²⁹

(a) Civil Docket.

(1) In General. The clerk must keep a record known as the "civil docket". The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) Items to Be Entered. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) Contents of Entries. Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment.

(b) Civil Judgments and Orders. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept.

(c) Indexes; Calendars. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial.

(d) Other Records. The clerk must keep any other records required by the Court.

Rule 80. Stenographically or Electronically Recorded Testimony

Whenever the testimony of a witness at a trial or hearing which was stenographically reported or electronically recorded is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported or recorded the testimony.

Rule 81. Applicability in General³⁰

These rules only apply to proceedings in the State Court of Yap, unless otherwise provided by Yap State Court Rules or by the laws of the State of Yap.

Rule 82. Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the State Court of Yap.

Rule 83. Vacant (Rules by District Courts)

Rule 84. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate. Where no form is found, the form found in the Appendix of Forms for the U.S. Federal Rules of Civil Procedure will be deemed adequate.

Rule 85. Vacant³¹

Rule 86. Effective Date

These rules take effect on March 9, 1982.

XI. Enforcement of Judgments³²

Rule 87. Definitions

Unless the context requires otherwise, the definitions in this section apply to this article of the civil rules.

(a) The "Chief of Police" is the chief of the Yap Division of Public Safety or whoever of sound mind and body over the age of 18 that the chief designates;

- (b) “Court,” as used in any provision concerning a motion, order or special proceeding, includes a judge thereof authorized to act with respect to such motion, order or special proceeding;
- (c) A “garnishee” is a person who owes a debt to a judgment debtor, or a person other than the judgment debtor who has property in their possession or custody in which a judgment debtor has an interest;
- (d) The word “judgment” means a final or interlocutory judgment;
- (e) A “judgment creditor” is a person in whose favor a money judgment is entered or a person who becomes entitled to enforce it;
- (f) A “judgment debtor” is a person against whom a money judgment is entered;
- (g) A “money judgment” is a judgment, or any part thereof, for a sum of money or directing the payment of a sum of money;
- (h) “Personal property” is all property not considered real property, including all debts owed to the judgment debtor, stock certificates, and the judgment debtor’s wages (including stock dividends, rent, or money from the sale of crops), as well as any other movable or intangible property interests not classified as real property;
- (i) “Real property” is all land and anything growing on land, attached to land, or erected on land is real property. This includes things such as easements, but excludes crops that have been severed and anything else that can be severed from the land without injuring the land;
- (j) A “representative” is any person who may legally receive service on behalf of another, unless the Court orders otherwise.

Rule 88. Hearing in Aid of Judgment

After a judgment has been entered against a judgment debtor, the court shall hold a hearing in aid of judgment at the judgment creditor’s request. At the hearing, the court shall address the most expedient means of satisfying the outstanding judgment and issue an order in aid of judgment stating the manner in which the judgment debtor shall satisfy it. If the judgment debtor fails to comply with an order in aid of judgment, he may be held in contempt.

Rule 89. Writ of Execution

Alternatively, a judgment creditor may request that the court issue a writ of execution to assist with the enforcement of a money judgment against a judgment debtor. Such a writ may be issued only after the time for appeal has expired, unless the court orders otherwise. Such writ may be issued no sooner than 10 days after the entry of judgment and no later than five years after the entry of judgment unless otherwise provided for in Rule 93.

Rule 90. Levy

If a party properly makes a request for a writ of execution, the court shall issue a writ requiring the Chief of Police to levy sufficient non-exempt personal property of the judgment debtor, as specified in the writ, to satisfy the judgment. Such levy shall be created by the delivery of the writ of execution. The Chief shall deliver the writ to an appropriate garnishee if personal property such as rent, a bank account, a stock dividend, or other debt owed to the judgment debtor, is to be levied upon.

Rule 91. Property to be Levied

In order to make a valid request for a writ of execution, the judgment creditor must present the court with a list of the properties that may be levied upon and, if the property to be levied upon is personal property owed to the judgment debtor, the name and address of the appropriate garnishee. There shall be no levy upon property not specified in the writ of execution.

Rule 92. Hearing on Levy

After a levy on any personal property, the Court shall hold a hearing on the judgment debtor's ability to satisfy the judgment with the judgment debtor, judgment creditor, and garnishee present, if applicable. After such hearing, the court shall issue an order specifying how the judgment debtor is to satisfy the judgment out of non-exempt property in the fastest manner permissible under this article. Parties may agree at the hearing to transfer property in satisfaction of the judgment if the parties agree upon its value, with that value to be credited to the amount outstanding. If tangible personal property levied upon has a readily ascertainable value, the court may order the transfer of that property to the judgment creditor with the value to be credited to the amount due on the outstanding judgment.

Rule 93. Duration of Writs of Execution and Levies

The writ of execution shall expire 90 days after being issued, but the levy created by delivery of the writ shall not expire until the outstanding judgment is satisfied or the court orders otherwise. If five years have passed since the entry of judgment, the judgment creditor may, within ten years of the entry of judgment, request a writ of execution only if he made such a request during the initial five year period following the entry of judgment.

Rule 94. Interrogatories and Hearings in Aid of Execution

(a) If a judgment creditor is unable to locate sufficient personal property belonging to the judgment debtor to satisfy the judgment, he or she may serve an interrogatory in aid of judgment on the defendant containing no more than 15 questions on the existence and location of property that could be used to satisfy the judgment. It shall be completed and returned no more than 20 days after successful service. The judgment creditor shall file a copy of the interrogatory with the Court when it is served upon the judgment debtor.

(b) Alternatively, the judgment creditor may move the court for a hearing in aid of execution. If the court grants such a motion, the judgment debtor must appear at a hearing under oath no later than fourteen days after the Court grants such a motion, unless the court orders otherwise. At the hearing, the Court shall address the existence and location of any property that may be used to satisfy the judgment.

Rule 95. Contents of Writ of Execution

The writ shall contain:

- (a) A brief description of the judgment against the judgment debtor, including the amount due, date the decision was rendered, names and addresses of the judgment creditor, judgment debtor, and garnishee, if applicable, and basis of liability;
- (b) The name of the Court and judge issuing the execution;
- (c) The official seal of the Court;
- (d) An instruction that only property that the judgment debtor has an interest in may be levied; and
- (e) A list of the properties which are to be levied upon.

Rule 96. Delivery of the Writ of Execution

The delivery a writ of execution to the Chief of Police shall require him or her to:

- (a) Levy the judgment debtor's non-exempt property specified in the writ; and
- (b) Notify the levied party of which properties and wages are exempt from levy by delivering a notice of levy to the judgment debtor and garnishee, if applicable, or the judgment debtor's or garnishee's representative.

Rule 97. Notice of Levy

The notice of levy shall contain:

- (a) A brief description of the reason for the levy and the procedure involved;
- (b) A simple description of the property and wages exempt from levy; and
- (c) A statement of the judgment debtor's right to a hearing before garnishment of wages, a bank account, or other intangible personal property.

Rule 98. Execution on Jointly-Owned Property

If a third party may claim a property interest in the property specified in the writ, they may petition the court to vacate the lien upon the property. Upon notice to the judgment debtor, judgment creditor, and garnishee, if applicable, the court shall grant such a petition if it finds that justice so requires.

Rule 99. Attachment

After the filing of a complaint in a civil action, a party may request, and a judge of the Court may grant, an order to attach any non-exempt property of the defendant if the defendant:

- (a) Is domiciled outside of the State of Yap or is a foreign corporation not qualified to do business in the State of Yap;
- (b) Resides or is domiciled in Yap and cannot be personally served despite good faith efforts to do so;
- (c) Has, with the intention of frustrating a judgment creditor's ability to collect on any judgment that has been or may be entered in their favor, taken steps to do so. Such actions may include disposing of, removing from the state, or hiding non-exempt property that could be used to satisfy such a judgment; or
- (d) Has otherwise shown that he or she is likely to evade attempts to enforce a judgment against him or her.

Such an order may be granted ex parte. However, the judgment debtor and garnishee, if applicable, must be given a copy of the attachment order and a notice of their rights within 48 hours of an attachment. If the judgment debtor or garnishee cannot be located, a copy of the notice may be given to their representative. If an order of attachment is granted pursuant to Rule 99(b), the party shall be advised of his rights by means reasonably calculated to provide them with notice of the attachment.

Rule 100. Effect of an Order of Attachment

An order of attachment shall enjoin the defendant or garnishee from selling, trading, transferring, or otherwise disposing of the property specified in the attachment order until the court orders

otherwise or the defendant prevails in the underlying suit. In extraordinary circumstances, the court may order the Chief of Police to seize property specified in the order of attachment.

Rule 101. Vacating an Order of Attachment

An order of attachment shall be vacated if a judgment debtor and garnishee, if applicable, or representative of the judgment debtor or garnishee is not provided with a notice of rights within 48 hours or is not given an opportunity to contest the attachment within 96 hours of the attachment.

Rule 102. Attachment of Jointly Owned Property

If a third party claims a property interest in the property attached, they may petition the court to release the property from attachment. Upon notice to the judgment debtor, judgment creditor, and garnishee, the court shall grant such a petition if the court finds that justice so requires.

Rule 103. Attachment Hearing

At a hearing to contest attachment, a party whose property is attached shall be given an opportunity to prove that certain attached properties are exempt from attachment and that Rule 99 is not applicable to him or her.

Rule 104. Notice of Rights

A notice of rights shall contain:

- (a) A brief description of the reason for the attachment and the procedure involved;
- (b) A plain language description of the property and wages exempt from attachment; and
- (c) A statement of the defendant's right to an opportunity to contest the attachment within 96 hours of when the property is attached.

Rule 105. Merger of Attachment Lien

If the plaintiff prevails in a civil action where property has been attached, the plaintiff may move to convert the pre-judgment attachment into a judgment lien on the property so attached. If such motion is granted, the lien shall be deemed to have been created when the property was attached.

Rule 106. Personal Property

The Chief of Police levies upon personal property by delivering a writ of execution to the judgment debtor or garnishee. This levy creates a lien on personal property specified on the writ which shall, in the case of tangible personal property, enjoin the judgment debtor from selling, trading, transferring, or otherwise disposing of the property specified in the writ until the hearing on the levy.

Rule 107. Levy upon a Garnishee

If intangible personal property owed by a garnishee is levied upon, the judgment creditor shall be entitled to direct payment from the garnishee for so long as is necessary to satisfy the unpaid judgment, beginning 7 days after the levy. Such payment shall not be made from property exempt from attachment and levy under this article, and the judgment debtor shall be entitled to an opportunity to attend the hearing described in Rule 108 of these Rules before payment commences.

Rule 108. Vacating a Levy

A lien upon a garnishee shall be vacated if a judgment debtor and garnishee, if applicable, or representative of the judgment debtor or garnishee is not provided with a notice of rights within 48 hours or is not given an opportunity to contest any levy pursuant to Rule 107 within 96 hours of that levy.

Rule 109. Priority

A lien created on personal property under this article shall have priority over any later transfer of that property encumbered by such a lien, unless:

- (a) An earlier lien or agreement to transfer the property for fair consideration existed at the time of lien creation, if the property is not a debt, bank account, wage, or other cash amount due the judgment debtor;
- (b) A later purchaser acquired the property for fair consideration without knowledge of the lien;
- (c) It is a transfer to satisfy a security interest given to acquire the purchase price of property; or
- (d) It is a transfer to satisfy a customary or traditional right or obligation that existed prior to the creation of the lien.

Rule 110. Exemptions

The following shall be exempt from any order of attachment, judicial lien, or writ of execution:

- (a) All U.S. military property;
- (b) Any money received from the government of the Yap State Government, Federated States of Micronesia Government, the United States Government or a political subdivision thereof, including a state government, as a pension, annuity, retirement or disability or death benefit. The deposit of such money into a bank account shall not affect this exemption;
- (c) All money received by any person as child support;
- (d) The judgment debtor's wages from the thirty days prior to the attachment or levy of their property that are necessary for the use of their immediate family residing on Yap; a judgment debtor may submit a debtor's affidavit to claim this exemption; and
- (e) Any other property that the court deems necessary for the welfare of the judgment debtor and his or her immediate family.

None of these exemptions shall affect a party's right to enforce a debt owed for a mortgage, secured loan, or other debt incurred for the purchase of an otherwise exempt property.

Rule 111. Death of a Party

If a party dies at any time before full satisfaction of the judgment against him or her, the Court shall hold a hearing on how to enforce the judgment upon the request of the judgment creditor. The hearing shall be attended by the judgment creditor and as many of the judgment debtor's family members, devisees, and others holding the decedent's property as are necessary to ensure satisfaction of the judgment.

Rule 112. Impracticability

If the location of personal property makes any of the provisions of Article XI impractical or unduly difficult to enforce, the Court may, on its own motion, modify or hold inapplicable the impracticable provision.

Rule 113. Penalty for Interference

Any person, including the judgment debtor, who intentionally interferes with the administration of any of the provisions of this article may be fined up to \$1000.

Rule 114. Interest

A judgment for the payment of money shall bear interest at the rate of no more than nine percent per year from the date of its entry if requested by the judgment creditor.

Rule 115. Inapplicability to the Federal and State Governments

This article shall not be applicable to a judgment against the State of Yap, the Federated States of Micronesia, or the United States or any of their political subdivisions.

Rule 116. Equitable Liens

Nothing in this article shall be construed to limit the Court's discretion to employ equitable remedies, such as the appointment of a receiver or the institution of a turnover action. Equitable liens shall be deemed to have arisen at the commencement of the equitable proceeding.

Rule 117. Prohibition of Land Ownership by Non-Citizens of Micronesia

Nothing in this article shall be construed to entitle non-citizens of Micronesia to own, perpetually lease, or hold perpetual easements on real property in Yap.

Rule 118. Severability

If any provision of Article XI, or amendments thereto, or application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions or application of these rules, or amendments thereto, that can be given effect without the invalid provision or application, and to this end the provisions of these rules, or amendments thereto, are severable.

Rule 119. Repeal of Trust Territory Laws

Article XI shall supersede Title 8 of the Trust Territory Code's provisions concerning personal property. This repeal shall not affect rights and duties that matured and penalties that were incurred before this article's effective date.

Notes on the Rules of Civil Procedure for the State Court of Yap

¹ General Court Order (GCO) 1982-1 approved the Rules of Civil Procedure. GCO 1982-1 became effective on March 8, 1982, and Rule 86 of the Rules of Civil Procedure specify that the rules became effective the following day, March 9, 1982. When the Rules of Civil Procedure were adopted, certain rules were followed by a "comment" that explained the purpose or policy behind the rule, often referring to its U.S. federal counterpart in force at the time. Moreover, when a rule was amended by a general court order, a "comment" was often added to the end of the amended version of the rule. For ease of readability, the comments will now appear in these notes instead of the main text of the rules.

In the event that the original rule's comment and amended version's comment are both still relevant, the original comment will be followed by the comment to the amendment. If the original rule's comment has

become irrelevant due to an amendment, the note will contain an explanation why. All of the comments are in their original form.

² Comment: Due recognition of the traditions and customs of the people of the State of Yap is specifically mentioned in this rule to reflect the purpose of the State Judiciary Act.

³ Comment: Rule 4 follows U.S. Federal Rule 4, but also draws on the Trust Territory Rule 4(f) notion that a reasonable attempt should be made to supplement the mere writing with additional explanation. This is because of the multiplicity of languages in the State of Yap and the greater likelihood here than in the United States that one served with a summons and complaint will be unable to read the words of the document. New subsection (g) is added pursuant to Section 9 of the State Judiciary Act. Rule 4(d)(2), service on minors and incompetents, is new.

A portion of Rule 4 was amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 4 contains the comment directly below.

Comment: Part (d)(7) of Rule 4 has been deleted. It is irrelevant to the State of Yap, as it was written in order to enable service according to state law for suits brought in the U.S. federal court system.

As stated in the amendment's comment above, Rule 4(d), in its original form, contained a sub-subsection (7). Sub-subsection (7) had stated, in its entirety, as follows: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any laws of the State of Yap."

⁴ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 5 contains the comment directly below. The comment refers to subsection (b) of Rule 5.

Comment: Rule 5 has been amended to correct a typo. The word "reason" in the second to last sentence has been changed to "person."

⁵ Comment: This rule is based on U.S. Federal Rule 6, with these changes: time periods for motions and responsive papers are enlarged and set forth; points and authorities must be filed; and possible sanctions are provided for failure to file; and the time to be added after service by mail is increased from 3 to 7 days.

Portions of Rule 6 were amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 6 contains the comment directly below.

Comment: Rule 6(a) has been amended to include only holidays recognized by Yap State Laws. Rule 6(d) has been amended to reflect the elimination of a mandatory motion day.

⁶ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 7 contains the comment directly below. The comment refers to subsection (b)(1)(B) of Rule 7.

Comment: Rule 7 has been amended to reflect the elimination of the motion day. It has also been modified so that the Court need not hold a hearing on a motion unless a party requests one, so long as the Court does not issue an order pursuant to Rule 78.

⁷ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 8 contains the comment directly below. The comment refers to subsection (a) of Rule 8.

Comment: Rule 8 has been amended so that a statement of jurisdiction is not required, as the Yap State Court is a court of general jurisdiction.

⁸ Comment: Subdivision (h) dealing with admiralty and maritime claims (in the U.S. Federal Rules and the F.S.M. Rules) is deleted because it will not be subject to State Court jurisdiction.

⁹ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 11 contains the comment directly below.

Comment: Rule 11 has been amended to require an attorney or trial counsel to include his or her telephone number and e-mail address, if available, in any pleading. One typo has also been corrected; the phrase "If a pleading is riot signed" has been changed to "If a pleading is not signed."

¹⁰ Comment: The provision of Federal Rule 12(a) which grants the United States or an officer or agency thereof 60 days in which to answer has not been carried over into this rule. It is felt that the Government of the State of Yap is not so large, cumbersome or bureaucratic as to require the extended time.

Significant portions of Rule 12 were amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 12 contains the comment directly below.

Comment: Rule 12 has been simplified and rearranged in order to be more accessible and simpler. While the form has changed significantly, no substantive changes are intended.

¹¹ Comment: This rule follows Federal Rule 14. It differs in one aspect from the Trust Territory rule: leave of the court is not required in this rule as required under the Trust Territory rule. Subdivision (c) and references to admiralty and maritime claims in subdivision (a) are deleted since admiralty and maritime claims will not be within the jurisdiction of the State Court of Yap.

Portions of Rule 14(a) were amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 14 contains the comment directly below.

Comment: Rule 14(a) has been changed to ease comprehension. No substantive changes are intended.

¹² As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 15, which differs significantly in form from the original version of the rule, contains the comment directly below.

Comment: Rule 15 has been simplified and rearranged in order to be more accessible and simpler. While the form has changed significantly, no substantive changes are intended.

¹³ Comment: This follows the Federal rule except:

(1) The phrase “The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury” has been deleted principally because Rule 53 gives ample opportunity for the use of masters. This situation is also rare, and in any event could be raised under clause (4).

(2) A portion dealing with jury trials has been deleted.

(3) A new subdivision (5) is added to reflect the hopes that the pre-trial conference may be able to help the parties resolve the dispute before it goes to trial. Mention is made to due recognition of traditions and customs as a means of conflict resolution as set forth in the purpose section of the State Judiciary Act.

¹⁴ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 18 contains the comment directly below.

Comment: Rule 18 (a) and (b) have been modified slightly in order to ease comprehension.

¹⁵ Comment: Federal Rule 38 concerns trial by jury.

¹⁶ Comment: Federal Rule 39 involves trial by jury and is not appropriate.

¹⁷ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 40 contains the comment directly below.

Comment: Rule 40 has been changed to make its requirements discretionary with the court. The misspelling of calendar as “calender” has also been corrected.

¹⁸ As amended by GCO 2009-002, which became effective on February 12, 2009. GCO 2009-002 added subsection (e) to Rule 41, and amended Rule 41 contains the comment directly below.

Comment: The term “action of record” for purposes of this Rule shall include, but is not limited to, information reflected in the file or settled record, settlement negotiations between the parties or their counsel, formal or informal discovery proceedings, the exchange of any pleadings, and written evidence of agreements between the parties or counsels which justifiably results in delays in prosecution. Reinstatement of a case for purpose of this Rule shall restore the case to the same position it had before dismissal. This is

in contrast with a case that is re-filed. A re-filed case constitutes a new case and is effective as to the date of re-filing.

¹⁹ Comment: For purposes of subdivision (2), the Republic of Belau, the Marshall Islands, and the Mariana Islands are all considered foreign countries.

²⁰ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 46 contains the comment directly below.

Comment: Rule 46 has been changed to ease comprehension and to reflect the most recent version of the U.S. Federal Rules of Civil Procedure. No significant substantive changes are intended.

²¹ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 55 contains the comment directly below.

Comment: Rule 55 has been amended to require the court to enter default and default judgments rather than the court clerk. In light of the size, organization, and workload of the Yap State Court, it is unlikely that requiring the clerk to enter default or default judgment in certain circumstances is necessary. A stylistic change has been made to part (c) to ease comprehension.

²² As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 58 contains the comment directly below.

Comment: Rule 58 has been modified to comport with the amended Rule 55. The clerk is no longer required to enter default judgment for sums certain.

²³ Comment: The time for expiration of temporary restraining orders has been increased in these rules from the U.S. Federal Rules, 10 days to 14 days. Time for the adverse party to move for dissolution has been increased from 2 days in the U.S. Federal Rules to 3 days here.

Rule 65(c) was amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 65 contains the comment directly below.

Comment: Rule 65 has been modified make the giving of security discretionary with the court rather than mandatory.

²⁴ Comment: The sources of this rule are U.S. Federal rule 67 and Title 28, Sections 2041 and 2042 of the United States Code.

²⁵ For reference purposes, GCO 2012-004, which became effective on May 3, 2012, adopted Title XI, Enforcement of Judgments. Title XI comprises Rules 87 to 119.

²⁶ Comment: Federal Rules 72–76 were abrogated when the U.S. Federal Rules of Appellate Procedure were promulgated.

²⁷ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 77 contains the comment directly below. The comment refers to subsection (c) of Rule 77.

Comment: Rule 77 has been modified so that “entering defaults or judgments by default” is not included in the list of proceedings “grantable of course by the clerk.”

²⁸ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 78 contains the comment directly below.

Comment: Rule 78 has been amended so that the court need not establish a motion day. In light of the size, organization, and workload of the Yap State Court, establishing such a motion day is unnecessary. The second paragraph has been modified to ease comprehension as in accordance with the newest U.S. Federal Rules of Civil Procedure.

²⁹ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 79, which differs significantly in form from the original version of the rule, contains the comment directly below.

Comment: Rule 79 of has been modified to ease comprehension. The provisions allowing “the Administrative Director of the State Court” to prescribe Rules has been removed, as they are unnecessary. With the exception of the removal of these provisions, no substantive changes are intended.

³⁰ As amended by GCO 2012-001, which became effective on January 17, 2012. Amended Rule 81 contains the comment directly below.

Comment: Rule 81 has been amended to ease comprehension. No substantive changes are intended.

³¹ GCO 2012-001 deleted the text of Rule 85, which referred to the title of the Rules of Civil Procedure, which became effective on January 17, 2012. Amended Rule 81 contains the comment directly below. Now vacant Rule 85 contains the comment directly below.

Comment: Rule 85 has been deleted. It is unnecessary.

³² GCO 2012-004, which became effective on May 3, 2012, adopted Title XI, Enforcement of Judgments. Title XI comprises Rules 87 to 119. GCO 2012-004 stated that its purpose in adopting the new title was “to make the enforcement of civil judgments more efficient.”