
# Rules of Court
# 2014

## Introduction

The sets of rules in this compilation govern proceedings in the Yap State Court. This is the first comprehensive collection of the Yap State Court rules since 1982.

As a background, the judicial power of Yap is vested in the Yap State Court, which was certified in 1982. The Yap State Court is composed of the trial and appellate divisions. The trial division has original jurisdiction over most civil and criminal matters, and the appellate division has the jurisdiction to review all decisions of the trial division.

On March 8, 1982, the Yap State Court issued General Court Order 1982-1, which approved the Rules of Evidence, Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, and Rules of the State Bar. On September 5, 2001, the Yap State Court issued General Court Order 2001-04, which established the Small Claims Section and approved the Rules of Small Claims Procedure and Rules of Procedure for Appealing Small Claims Final Decisions. Finally, on March 20, 2012, the Yap State Court issued General Court Order 2012-003, which established the Yap State Bar Association Ethics Complaint Procedure Rules.

Over the years, several significant amendments had been made to various rules through general court orders. Accordingly, the Yap State Court has now formally incorporated these amendments into the relevant set of court rules. The court has also included "notes" at the end of each set of rules, which provide important information on a specific rule, such as when an amendment was made; the reason given for an amendment, if any; whether a comment was included when the rule was promulgated; etc.

It is the Yap State Court's sincere hope that this compilation will be useful to both practitioners and the public.

# Yap State Court
# Rules of Civil Procedure

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

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# RULES OF CIVIL PROCEDURE FOR THE STATE COURT OF YAP[1]

## I. Scope of Rules – One Form of Action

Rule 1. Scope of Rules[2]

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. Process[3]

(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 Papers[4]

(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. Time[5]

(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 then 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 Motions[6]

(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 Pleadings[7]

(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 Matters[8]

(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 Pleadings[9]

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 Pleadings[10]

(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 Practice[11]

(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 Pleadings[12]

(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 Issues[13]

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 Remedies[14]

(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 stall 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 Trial[17]

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 Actions[18]

(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 Record[19]

(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 Order[20]

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. Default[21]

(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 Judgment[22]

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 I0 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. Injunctions[23]

(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 Court[24]

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. Execution[25]

(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

Rules 72.–76. Vacant[26]

## X. Courts and Clerks

Rule 77. Courts and Clerks[27]

(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 Hearing[28]

(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 Therein[29]

(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 General[30]

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. Vacant[31]

Rule 86. Effective Date

These rules take effect on March 9, 1982.

## XI. Enforcement of Judgments[32]

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.

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**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."

# Yap State Court
# Rules of Criminal Procedure

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

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# RULES OF CRIMINAL PROCEDURE FOR THE STATE COURT OF YAP[1]

## I. Scope, Purpose, and Construction

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the Trial Division of the State Court of Yap.

Rule 2. Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay with due recognition to the traditions and customs of the people of the State of Yap.

## II. Preliminary Proceedings

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the State Court of Yap.

Rule 4. Arrest Warrant or Summons upon Complaint

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney or trial counselor for the government, a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by a justice and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a justice.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a justice at a stated time and place.

(d) Execution of Service; and Return.

(1) By Whom. The warrant shall be executed by a policeman or by some other officer authorized by law or, when the justice issuing the warrant has found exceptional circumstances requiring execution of the warrant by some other

person, by another person specifically authorized in the warrant. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Yap.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy thereof to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of residence or of business with some person of suitable age and discretion then residing or employed therein. Reasonable attempts shall also be made to assure that the person served understands that it is an important legal document from the court.

(4) Return. The officer executing a warrant shall return to the justice before whom the defendant is brought pursuant to Rule 5. At the request of the attorney or trial counselor for the government any unexecuted warrant shall be returned to the justice by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall return to the justice before whom the summons is returnable. At the request of the attorney or trial counselor for the government made at any time while the complaint is vending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the justice to the policeman or other authorized person for execution or service.

Rule 5. Initial Appearance[2]

(a) In General. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available Justice. If a person arrested without a warrant is brought before a Justice, a complaint shall be filed immediately which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before a Justice, that person shall proceed in accordance with the applicable subdivisions of this rule.

(b) Vacant. (minor offenses)

(c) Notification of Rights. The defendant shall not be called upon to plead. The Justice shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain an attorney or trial counselor, of his right to request the assignment of counsel if he is financially unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. He shall inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to talk with counsel and shall admit that defendant to bail as provided by statute or in these rules.

Rule 5.1. Preliminary Examination

(a) Probable Cause Finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the Justice shall forthwith hold him to answer. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) Discharge of Defendant. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the Justice shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) Records. After concluding the proceeding the Justice shall transmit forthwith to the Clerk of the State Court all papers in the proceeding. The Justice shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a Justice, the attorney or trial counselor for a defendant in a criminal ease may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any Justice thereof, an order may issue that the Justice make available a copy of the transcript, or of a portion thereof, to defense attorney or trial counselor. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security thereof, in which case the expense shall be paid by the State Court from available appropriated funds. Counsel for the government may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

## III. Indictment and Information

Rule 6. Vacant (The Grand Jury)[3]

Rule 7. Information and Complaint[4]

(a) Use. Felony offenses shall be prosecuted by information, all others may be prosecuted by complaint.

(b) Vacant. (Waiver of Indictment)

(c) Nature and Contents of Information.

(1) In General. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney or trial counselor for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the

defendant committed the offense are unknown or that he committed it by one or more specified means. The information shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated.

(2) Criminal Forfeiture. No judgment of forfeiture may be entered in a criminal proceeding unless the information shall allege the extent of the interest or property subject to forfeiture.

(3) Harmless Error. Error in the citation or description or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the information and complaint.

(e) Amendment. The court may permit an information or complaint to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of Particulars. The court may direct the filing, of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses. Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons upon Information[5]

(a) Issuance. Upon the request of the attorney or trial counselor for the government a notice shall issue a warrant for the arrest of each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a). Upon the request of the attorney or trial counselor for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the policeman or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, an arrest warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the information and it shall command that the defendant be arrested and brought

before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to 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 corporation's last known address within the State of Yap or at its principal place of business. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. The officer executing a warrant shall return it to the court. At the request of the attorney or trial counselor for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person whose name is on the summons shall return the summons. At the request of the attorney or trial counselor for the government made at any time while the information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the policeman or other authorized person for execution or service.

(d) Vacant. (Remand to United States Magistrate for trial of minor offenses)

## IV. Arraignment and Preparation for Trial

Rule 10. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the information to the defendant or stating to him the charges made against him and calling on him to plead thereto. He shall be given a copy of the information before he is called upon to plead.

Rule 11. Pleas

(a) Alternatives. A defendant may plead not guilty, guilty, or nolo contenders. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Nolo Contenders. A defendant may plead nolo contenders only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advise to Defendant. Before accepting a plea of guilty or nolo contenders, the court must inform the defendant personally in open court and make sure that he understands the following:

(1) the nature of the charge to which the plea is offered, and the maximum possible penalty that he could receive under the law; and

(2) if the defendant is not represented by counsel, that he has the right to be represented by counsel at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to a trial and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be forced to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he gives up the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false swearing.

(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney or trial counselor for the government and the defendant, his attorney or trial counselor.

(e) Plea Agreement Procedure.

(1) In General. The attorney or trial counselor for the government and the attorney or trial counselor for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney or trial counselor for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case. The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

(3) Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant

personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant then that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided a in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere;

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) any statement made in the course of plea discussions with counsel for the government which do not result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury on false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea, and the inquiry into the accuracy of the plea.

Rule 12. Motions before Trial; Defenses and Objections

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the information and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date. The court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by Counsel for the Government of the Intention to Use Evidence.

(1) At the Discretion of Counsel for the Government. At arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) At the Request of the Defendant. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b) (3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on Motion. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after finding, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Records. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) Effect of Determination. If the court grants a motion based on a defect in the institution of the prosecution or in the information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new information. Nothing in this rule shall be deemed to affect the provisions of any law of the State of Yap relating to periods of limitations.

Rule 12.1. Notice of Alibi

(a) Notice by Defendant. Upon written demand of the attorney or trial counselor for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney or trial counselor for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or

places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) Disclosure of Information and Witness. Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney or trial counselor for the government shall serve upon the defendant, his attorney or trial counselor a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing Duty to Disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party, his attorney or trial counselor of the existence and identity of such additional witness.

(d) Failure to Comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

Rule 12.2. Notice of Defense Based upon Mental Condition

(a) Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he shall, within the time provided for the filing of pretrial motions or at such time as the court may direct, notify the attorney or trial counselor for the government in writing of such intention and file a copy of such notice with the clerk of court. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Mental Disease or Defect Inconsistent with the Mental Element Required for the Offense Charged. If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney or trial counselor for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Psychiatric Examination. In an appropriate case the court may, upon motion of the attorney or trial counselor for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for

by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.

(d) Failure to Comply. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state.

Rule 13. Trial Together of Informations[6]

The court may order two or more informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution were under such single information.

Rule 14. Relief from Prejudicial Joinder[7]

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney or trial counselor for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 15. Depositions.

(a) When Taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) or this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of Expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant, his attorney, or trial counselor for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How Taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. Attorney or trial counselor for the government shall make available to the defendant or his counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the counsel for the government and to which the defendant would be entitled at the trial.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Rules of Evidence for the State Court of Yap, or the witness gives testimony at the trial or hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Deposition Testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16. Discovery and Inspection

(a) Disclosure of Evidence by the Government.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request of a defendant, attorney or trial counselor for the government shall permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government; the substance of any oral statement which the counsel for the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent.

(B) Defendant's Prior Record. Upon request of the defendant, counsel for the government shall furnish to the defendant such copy of his prior

criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government.

(C) Documents and Tangible Objects. Upon request of the defendant, counsel for the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense, or are intended for use by the counsel for the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Report of Examinations and Tests. Upon requests of a defendant, the counsel for the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(E) Prosecution Witnesses. Upon request of a defendant, the counsel for the government shall provide to the defendant the name and address of any person whom the prosecuting attorney or trial counselor intends to call as a witness together with statements made by the witnesses, and the record of any felony convictions of such proposed witnesses which is in the possession of the counsel for the government.

(F) Material Favorable to Defendant. Upon request of a defendant, counsel for the government shall provide to the defendant any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.

(2) Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a) (1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney or trial counselor for the government or other government agents in connection with the investigation or prosecution of the case.

(3) Vacant.

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a) (1) (C) or (D) of this rule, upon compliance with such request by counsel for the government, the defendant, on request of counsel for the government, shall permit the counsel for the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portion thereof, which are within the possession, custody, or control of the

defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a) (1) (C) or (D) of this rule, upon compliance with such request by counsel for the government, the defendant, on request of counsel for the government, shall hermit counsel for the government to inspect and copy or photograph any results or reports or physical or mental examinations and of scientific or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(C) Defense Witnesses. The defendant, on request of counsel for the government, shall state the nature of any defense which he intends to use at trial and the name and address of any person whom the defendant intends to call as a witness in support of his defenses.

(2) Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, to the defendant, his agent, attorney or trial counselor.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, or discovers additional witnesses or defenses, the party shall promptly notify the other party, his attorney, trial counselor or court of the existence of the additional evidence, material, witness or defense.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply with a Request. If any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi Witnesses. Discovery of alibi witnesses is governed by Rule 12.1.

Rule 17. Subpoena

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Witness Expenses. The court shall order at any time that subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys or trial counselors.

(d) Service. A subpoena may be served by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and, by tendering to him the fee for one (1) day's attendance and the mileage allowed by law. Reasonable attempts shall also 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. Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the State of Yap, or any governmental officer or agency charged with the responsibility of enforcing the criminal laws of the Yap State Government. At or before the time stated for appearance in a subpoena, the person to whom such a subpoena is delivered for service shall write a report of his action on it, sign it and have it delivered to the court named therein. If he has served the subpoena, his report shall show the date, place, and method of service.

(e) Place of Service.

(1) In the State of Yap. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Yap.

(2) Vacant. (Abroad)

(f) For Taking Deposition; Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the witness and the parties.

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

(h) Information Not Subject To Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 16(a)(1)(E) and 26.2.

Rule 17.1. Pretrial Conference

At any time after the filing of the information the court upon motion of any party or upon its own motion may order one or more conference to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney or trial counselor at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney or trial counselor. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

## V. Venue

Rule 18. Vacant (Place of Prosecution and Trial)

Rule 19. Vacant (Rescinded)

Rule 20. Vacant (Transfer from the District for Plea and Sentence)

Rule 21. Vacant (Transfer from the District for Trial)

Rule 22. Vacant (Time of Motion to Transfer)

## VI. Trial

Rule 23. Finding by the Court upon Trial

The Court shall make a general finding and shall in addition, on request made before the general finding, find the general finding, find the facts specially. Such finding may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Rule 24. Vacant (Trial Jurors)[8]

Rule 25. Disability of Justice[9]

(a) During Trial. If by reason of death, sickness or other disability the Justice before whom a trial has commenced is unable to proceed with the trial, a new trial shall be granted before any another Justice, unless waived by both parties, in which event the other Justice, upon certifying his familiarity with the record of the trial, may proceed with and finish the trial.

(b) After Finding of Guilt. If by reason of death, sickness or other disability the Justice before whom the defendant has been tried is unable to perform the duties to be performed by the court after a finding of guilt, any other Justice 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 26. Taking of Testimony

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by state statute or by these rules.

Rule 26.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give 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 of this Court. The court's determination shall be treated as a ruling on a question of law.

Rule 26.2. Production of Statements of Witnesses

(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney or trial counselor for the government or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified

(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over his objection shall be preserved by counsel for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate division of the state court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of that party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the counsel for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him; or

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement or that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof.

Rule 27. Proof of Official Record

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. Interpreters

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

Rule 29. Motion for Judgment of Acquittal[10]

(a) Motion Before Parties Rest. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence of either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Vacant. (Reservation of Decision on Motion)

(c) Vacant. (Discharge by Jury)

Rule 29.1. Closing Argument

After the closing of evidence, the prosecution shall oven the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Vacant. (Instructions)[11]

Rule 31. Finding[12]

(a) Return. The finding of the justice shall be returned in open court.

(b) Vacant. (Several Defendants)

(c) Conviction of Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Vacant. (Poll of Jury)

(e) Criminal Forfeiture. If the information alleges that an interest or property is subject to criminal forfeiture, an order shall be returned as to the extent of the interest or property subject to forfeiture, if any.

## VII. Judgment

Rule 32. Sentence and Judgment

(a) Sentence.

(1) Imposing of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford the attorney or trial counselor an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to

present any information in mitigation of punishment. The counsel for the government shall have an equivalent opportunity to speak to the court.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant. so requests, the clerk of court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) In General. A judgment of conviction shall set forth the plea, the findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the justice and entered by the clerk.

(2) Criminal Forfeiture. When a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the attorney general to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation.

(1) When made. Upon order of the court, the probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) Before imposing sentence, the court shall, upon request, permit the defendant, or his trial counsel if he is so represented, to read the report of the presentence investigation a exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c) (3) (A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained

therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney or trial counselor for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the counsel for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) Vacant.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) Vacant. (Probation)

(f) Vacant. (Revocation of Probation)

Rule 32.1. Revocation or Modification of Probation

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he shall be afforded a prompt hearing before a justice in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his own behalf

(C) upon request, the opportunity to question witnesses against him unless, for good cause, the justice decides that justice does not require the appearance of the witness; and

(D) notice of his right to be represented by counsel. The proceedings shall be recorded stenographically or by an electronic recording device. If probable cause is found to exist, the probationer shall be held for a revocation hearing. The probationer may be released pursuant to Rule 46(c) pending the revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time. The probationer shall be given:

(A) written notice of the alleged violation of probation;

(B) disclosure of the evidence against him;

(C) an opportunity to appear and to present evidence in his own behalf;

(D) the opportunity to question witnesses against him; and

(E) notice of his right to be represented by counsel.

(b) Modification of Probation. A hearing and assistance of an attorney or trial counselor are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his request or the court's own motion is favorable to him.

Rule 33. New Trial[13]

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. The court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after finding of guilt or within such further time as the court may fix during the 7 day period.

Rule 34. Arrest of Judgment[14]

The court on motion of a defendant shall arrest judgment if the information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after the finding of guilt, or after plea of guilty or nolo contendere, or with such further time as the court may fix during the 7 day period.

Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the State Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

Rule 36. Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

## VIII. Appeal

Rule 37. Vacant (Abrogated eff. July 1, 1968)[15]

Rule 38. Stay of Execution, and Relief Pending Review

(a) Stay of Execution.

(1) Vacant. (Death)

(2) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the state court Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained under conditions, and at a place, which permit the defendant to assist in the preparation of his appeal to the Appellate Division of the State Court.

(3) A sentence to pay a fine or fine and costs, if an appeal is taken, may be stayed by the Trial Court or by the Appellate Division upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed, the court shall fix the terms of the stay.

Rule 39. Vacant. (Defer)

Rule 40. Vacant. (Commitment to another District; Removal)

## IX. Supplementary and Special Proceedings

Rule 41. Search and Seizure

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a justice upon the request of a policeman or an attorney or trial counsel for the government.

(b) Property or Persons Which May Be Seized with a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents.

(1) Warrant upon Affidavit. A warrant shall issue only on an affidavit or affidavits sworn to before a justice and establishing the grounds for issuing the warrant. If the justice is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant, the justice may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made a part of the affidavit. The warrant shall be directed to a policeman: It shall command the policeman to search, within a specified period of time which may not exceed ten (10) days unless a longer period is authorized by the court, the person or place named for the property specified. The warrant shall be served in the daytime,

unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate the justice to whom it shall be returned.

(2) Warrant upon Oral Testimony.

(A) General Rule. If the circumstances make it reasonable to dispense with a written affidavit, a justice may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means.

(B) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the justice. The justice shall enter, verbatim, what is so read to such justice on a document to be known as the original warrant. The justice may direct that the warrant be modified.

(C) Issuance. If the justice is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the justice shall order the issuance of a warrant by directing the person requesting the warrant to sign the justice's name on the duplicate original warrant. The justice shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) Recording and Certification of Testimony. When a caller informs the justice that the purpose of the call is to request a warrant, the justice shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the justice shall record by means of such device all of the call after the caller informs the justice that the purpose of the call is to request a warrant. Otherwise a stenographic or long-hand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the justice shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the justice shall file a signed copy with the court.

(E) Contents. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) Additional Rule for Execution. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) Motion to Suppress Precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(d) Execution and Returns with Inventory. The policeman taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for .the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the policeman. The justice shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motions for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The justice shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If the motion for return of property is made or comes on for hearing after an information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to Suppress. A motion to suppress evidence may be made in as provided in Rule 12.

(g) Return of Papers to Clerk. The justice before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of court.

(h) Definition. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time.

Rule 42. Criminal Contempt[16]

All adjudications of contempt shall be pursuant to the following practices and procedures:

(a) Notice. Any person accused of committing a criminal contempt shall have a right to notice of the charges and an opportunity to present a defense and mitigation; provided, that no punishment of a fine of more than $100.00 or imprisonment shall be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, to have the assistance of counsel, and to be released on bail pending adjudication of the charges. He shall have a right to be charged within three months of the contempt and a right not to be charged twice for the same contempt.

(b) Fine or Imprisonment. A person found to be in contempt of court shall be fined not more than $1,000.00 or imprisonment for not more than six months.

(c) Appeal. Any adjudication of contempt is subject to appeal to the Appellate Division of the State Court. Any punishment of contempt may be stayed pending appeal, but a punishment of imprisonment shall be stayed on appeal automatically, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice, which finding must be supported by written findings of fact. A denial of a stay of imprisonment is subject to review.

## X. General Provisions

Rule 43. Presence of the Defendant

(a) Presence Required. The defendant shall be present at arraignment, at the time of the plea, at every stage of the trial including the finding of the court, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required. The further progress of trial to and including the return of the finding of the court shall not be prevented and the defendant shall be considered to have waived his right to be present whenever a defendant, initially present,

(1) voluntarily absents himself after the trial has commenced (whether or not he has been informed by the court of his obligation to remain during the trial), or

(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for offenses punishable by fine or by the imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and the imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

Rule 44. Right to and Assignment of Counsel

(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have an attorney or trial counselor assigned to represent him at every stage of the proceedings from his initial appearance through appeal, unless he waives such appointment.

(b) Vacant.

(c) Joint Representation. Whenever two or more defendants have been jointly charged pursuant to Rule 8(b), or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counselor or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

Rule 45. Time[17]

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall 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 a 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 these rules, "legal holiday" includes New Year's Day,

President's Day, Federated States of Micronesia Day, Congress of Micronesia Day, Independence Day, Labor Day, Columbus Day, United National Day, Veterans Day, Memorial Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the Federated States of Micronesia, or the Governor of Yap.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor 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 if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) Vacant. (Rescinded eff. July 1, 1486)

(d) For Motions; Affidavits. A written motion together with memorandum of points and authorities, other than one which may be heard ex parte and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless ,a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 6 days shall be added to the prescribed period.

Rule 46. Release from Custody[18]

(a) Release Prior to Trial.

(1) Any person charged with an offense shall, at his appearance before a justice be ordered release pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the justice, unless the justice determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the justice shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(A) place the person in the custody of a designated person or organization agreeing to supervise him;

(B) place restrictions on the travel, association, or place of abode of the person during the period of release;

(C) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, or a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(D) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(E) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) In determining which conditions of release will reasonably assure appearance, the justice shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(3) A justice authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violation of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(4) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the justice who imposed them. Unless the conditions of release are amended and the person is thereupon released, the justice shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the justice who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the justice shall set forth in writing the reasons for continuing the requirement. In the event that the justice who imposed conditions of release is not available, any other justice may review such conditions.

(5) A justice ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: Provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (4) shall apply.

(6) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(7) If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shorn that it may become impracticable to secure his presence by subpoena, a justice shall impose conditions of release pursuant to Rule 46(a) (1) through (6) above. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable

period of time until the deposition of the witness can be taken pursuant to Rule 15.

(b) Release During Trial. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Pending Sentence and Notice of Appeal. A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in accordance with the provisions of Rule 46(a)(1) through (6) above unless the court or justice has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

(d) Justification of Sureties. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture.

(1) Declaration. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of a default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of court as their agent upon whom any papers affecting their liability may be served. Their 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 court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of Detention Pending Trial. The court shall exercise supervision over the detention of defendants and witnesses pending trial for the purpose of eliminating all unnecessary detention. The attorney or trial counselor for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending information, arraignment or trial for a period in excess of ten days. As to

each witness so listed the counsel for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the counsel for the government shall make a statement of the reasons why the defendant is still held in custody.

Rule 47. Motions[19]

(a) Written or Oral. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

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

(c) Hearing and Notice. Except for motions which properly can be disposed of ex parte, the Court shall hold a hearing on every motion prior to disposition thereof. The movant shall give written notice to all parties of the time and place of the hearing in accordance with Rule 45. The notice shall be served with the motion or separately at a later time.

(d) 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 but not limited to refusal by the Court to hear counsel at the hearing, or postponement of the hearing until the memorandum is prepared and filed.

Rule 48. Dismissal[20]

(a) By Attorney or Trial Counselor for Government. The attorney or trial counselor for the government may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendants.

(b) By Court. If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint.

Rule 49. Service and Filing of Papers[21]

(a) Service: When Required. Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court 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 counsel unless service upon the party himself is ordered by the court. Service upon the counsel or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail a notice thereof to each party, or shall have

each party served with a notice thereof. The clerk shall note in the docket the provision and method of notice.

(d) Filing. Papers required to be served shall be filed with the court. Payers shall be filed in the manner provided in civil actions.

Rule 50. Calendars; Plan for Prompt Disposition

(a) The court may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(b) Vacant. (Plan for Achieving Prompt Disposition of Criminal Cases).

Rule 51. Exceptions Unnecessary

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be discarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Regulation of Conduct in the Courtroom

The taking of photograph in the courtroom during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the courtroom shall not be allowed except otherwise permitted by the court.

Rule 54. Application and Execution

(a) Court. These rules apply to all criminal proceedings in the State Court of the State of Yap.

(b) Vacant. (Proceeding)

(c) Application of Terms. As used in these rules, the following have the designated meanings:

(1) "Justice" means the Chief Justice or any Associate Justice.

(2) Counsel means an attorney or trial counselor.

(d) Comments. Where there is no comment after each rule, the rule is the same as the Federal Rule. If a rule has comment after it, there are some changes as additions made.

Rule 55. Records

The clerk of the court shall keep such records in criminal proceedings as the Chief Justice shall prescribe. Among the records required to be kept by the clerk shall be a book known as the

"criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order of judgment shall show the date the entry is made.

Rule 56. Courts and Clerks[22]

The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office shall be open during business hours on all days except Saturdays, Sundays and legal holidays, unless provided by order of the court.

Rule 57. Rules of Court[23]

(a) Vacant. (Rules by Districts Courts)

(b) Procedure Not Otherwise Specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

Rule 58. Vacant (Forms)[24]

Rule 59. Effective Date

These rules take effect on March 9, 1982. They govern all criminal proceedings thereafter commenced and as far as just and practicable all proceedings then pending.

Rule 60. Title

These rules may be known and cited as the Rules of Criminal Procedure for the Trial Division of the State Court of Yap.

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**Notes on the Rules of Criminal Procedure for the State Court of Yap**

[1] General Court Order (GCO) 1982-1 approved the Rules of Criminal Procedure. GCO 1982-1 became effective on March 8, 1982. There are no other general court orders involving the Rules of Criminal Procedure; accordingly, no amendments have been made to the Rules of Criminal Procedure since their adoption. Furthermore, when the Rules of Criminal 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. For ease of readability, the comments will now appear in these notes instead of the main text of the rules.

[2] Comment: Rule 5(b) is deleted because minor offense is triable/under these rules rather than under separate procedures.

[3] Comment: The jury system is not applicable here.

[4] Comment: This rule has been changed to include prosecution by complaint.

[5] Comment: Rule 9(d) is vacated as inapplicable.

[6] Comment: This rule follows the U.S. Federal rule verbatim except that any reference to indictments is deleted.

[7] Comment: This rule follows the U.S. Federal rule verbatim with the sole exception of deleting one reference to indictment.

[8] Comment: This rule is vacated as inapplicable.

[9] Comment: Rule 25(a) is different from the Federal Rule to the extent that any inference to a jury is deleted.

[10] Comment: This rule is patterned after Federal rule 29 except that any reference to indictment or trial by jury is deleted.

[11] Comment: Federal rule 30 pertains to jury instructions and so is not included.

[12] Comment: This rule follows Federal rule 31, but deleting references to juries, and multiple defendants.

[13] Comment: This is the same as Federal rule 33 except the reference to a jury trial is deleted.

[14] Comment: This follows Federal rule 34 except references to "indictment" and "verdict" are deleted.

[15] Comment: This is vacant because Federal rule 37 has been abrogated. New appellate procedures rules.

[16] Comment: Sections (a) and (b) of this rule are regulated by Section 27 of the Yap State Judiciary Act and abstracted therefrom.

[17] Comment: This rule is based on the Federal rule. There are two principal changes: (1) the time periods for motions and responsive papers are set forth, with the requirement that the motion and the opposition be supported by memoranda of points and authorities; and (2) the additional time allowed after service by mail is increased from 3 days to 6. Rule 45(d) is slightly different than the Federal Rules in light of the additions to Rule 47(b), (c), (d).

[18] Comment: This rule follows Federal rule 46. It is adopted to change the reasons under which release is available from primarily cash bill, as is now practiced, under TT rules 27 and 31, and 12, T.T.C Sections 251 through 258, to conditions slightly less harsh and more flexible which will assure the defendant's return to court.

Where Federal rule 46 referred to sections in Title 18 of the United States Code, those sections have been set forth in their entirety in the preparation of this rule.

[19] Comment: This Rule partially follows the Federal rules as to (a). Sections (b), (c), and (d) have been added to set out the procedures needed for making a motion.

[20] Comment: This rule follows the Federal rule except it omits any reference to indictment. The rule is also very similar to 12 T.T.C. 351, 352, but adds clarification that delay in filing an information may result in dismissal.

[21] Comment: (deleted the last sentence of Rule 49(d) above)

[22] Comment: This rule follows Federal rule 56. Changes to reflect exactness in terminology.

[23] Comment: This follows Federal rule 57(e), and TT rule 32.

[24] Comment: This court does not anticipate issuing an appendix of forms, but practitioners may wish to refer to the Federal rules appendix of forms for guidance.

# Yap State Court
# Rules of Evidence

**RULES OF EVIDENCE**
**FOR THE STATE COURT OF YAP**

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# RULES OF EVIDENCE
# FOR THE STATE COURT OF YAP[i]

## Article I. General Provisions

Rule 101. Scope

These rules govern proceedings in the State Court.

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined with due recognition given to the customs and traditions of the people of the State of Yap.

Rule 103. Ruling on Evidence

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Vacant. (Hearing of Jury)

(d) Plain Error. Nothing in this rule precludes taking notice of plain-errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104. Preliminary Questions

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Vacant. (Hearing of Jury)

(d) Testimony by Accused. The accused does not, by testifying upon a -preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce evidence relevant to weight or credibility.

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope.

Rule 106. Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

## Article II. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questions.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice arid the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Vacant. (Instructing Jury)

## Article III. Presumptions in Civil Actions and Proceedings

Rule 301. Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by state statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Rule 302. Applicability of State Law in Civil Actions and Proceedings (Vacant)

## Article IV. Relevancy and Its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the Federated States of Micronesia, by the Charter of Yap State Government, by state statute, by these rules or by other rules prescribed by the state court. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence Generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. Evidence of the character of a witness, as provided in rules 607, 608 and 609.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for nor invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury,

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing please or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of an attorney or trial counselor.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise-wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 412. Rape Cases; Relevance of Victim's Past Behavior

Vacant. (FSM major crime)

## Article V. Privileges

Rule 501. General Rule

Except as otherwise required by the Constitution of the Federated States of Micronesia, the Charter of Yap State Government, or provided by state statute or in rules prescribed by the state court

pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the Supreme Court of the Federated States of Micronesia and Yap State Court in the light of reason and experience.

## Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Rule 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Rule 605. Competency of Judge as Witness

A justice presiding at the trial may not testify in that trial as a witness. No objections need be made in order to preserve the point.

Rule 606. Competency of Juror as Witness

(a) Vacant. (At the Trial)

(b) Vacant. (Inquiry into Validity of Verdict or Indictment)

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on

cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction, supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certification of Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications, is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory for the purpose of testifying, either

(a) while testifying, or

(b) before testifying, if the court in its discretion determines it is necessary in the interest of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or. delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interest of justice so require, declaring a mistrial.

Rule 613. Prior Statements of Witnesses

(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing attorney or trial counselor.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801 (d) (2).

Rule 614. Calling and Interrogation of Witnesses by Court

(a) Calling by Court. The court may, in its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or-at the next available opportunity.

Rule 615. Exclusion of Witnesses

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (a) a party who is a natural person, or (b) an officer or employee of a party. which is not a natural person designated as its representative by its attorney, or trial counselor or (c) a person whose presence is shown by a party to be essential to the presentation of his cause.

## Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the court to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the court.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706. Court Appointed Experts

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds

which may be provided by law in criminal cases. In civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Vacant. (Disclosure of Appointment)

(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

## Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the State Court or by state statute.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(b) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(c) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for Purposes of Medical Diagnosis or Treatment. Statement made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof or insofar as reasonably pertinent to diagnosis or treatment.

(e) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(g) Absence of Entry in Records Kept in Accordance with the Provisions of Paragraph (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (f), to prove the nonoccurence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (1) the activities of the office or agency, or (2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (3) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(l) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(n) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record.is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in Ancient Documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(q) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(r) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements, contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) Reputation Concerning Personal or Family History. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(t) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(u) Reputation as to Character. Reputation of a person's character among his associates or in the community.

(v) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact

essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(w) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(x) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (1) the statement is offered as evidence of a material fact; (2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (3) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of Unavailability. "unavailability as witness" includes situations in which the declarant--

> (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or
>
> (2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or
>
> (3) testifies to a lack of memory of the subject matter of his statement; or
>
> (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
>
> (5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means...

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

> (1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course, of the same or another proceeding, if the party whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History. (A) A statement concerning the declarant's own birth, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a -statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

## Article IX. Authentication and Identification

Rule 901. Requirement of Authentication or Identification

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness with Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purpose of the litigation.

(3) Comparison by Court or Expert Witness. Comparison by the court or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone agency to a particular person or business, if (A) in the case of a person, circumstances, including self identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process of System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by state statute or by other rules prescribed by the State Court.

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents under Seal. A document bearing a seal purporting to be that of the State of Yap, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents not Under Seal. A document purporting to bear the signature in his official capacity of an officer or employee of the State of Yap, having no seal, if a public officer having a seal and having official duties certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign jurisdiction to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (1) of the executing or attesting person, or (2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (a), (b), or (c) of this rule or complying with any state statute or rule prescribed by the State Court.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumptions under State Statute. Any signature, document, or other matter declared by state statute to be presumptively or prima facie genuine or authentic.

Rule 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

## Article X. Contents of Writings, Recordings, and Photographs

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating,

photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any print-out or other output readable by sight, shown to reflect the data accurately, is an "original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by state statute.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (a) a genuine question is raised as to the authenticity of the original or (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photographs is admissible if:

(a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) Original not Obtainable. No original can be obtained by any available judicial process or procedure; or

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(d) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Rule 1008. Functions of Court

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the court to determine.

## Article XI. Miscellaneous Rules

Rule 1101. Applicability of Rules

(a) Court. These rules apply to proceedings of the State Court.

(b) Vacant. (Proceedings Generally)

(c) Rule of Privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Rules Inapplicable. The rules (other than with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) Vacant. (Grand Jury)

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(e) Vacant. (Rules Applicable in Part)

Rule 1102. Vacant (Amendments)

Rule 1103. Title

These rules may be known and cited as the Rules of Evidence for the State Court of Yap.

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**Notes on the Rules of Evidence for the State Court of Yap**

[i] General Court Order (GCO) 1982-1 approved the Rules of Evidence. GCO 1982-1 became effective on March 8, 1982. There are no other general court orders involving the Rules of Evidence; accordingly, no amendments have been made to the Rules of Evidence since their adoption.

# Yap State Court
# Rules of Appellate Procedure

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

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# RULES OF APPELLATE PROCEDURE FOR THE STATE COURT OF YAP[1]

## I. Applicability of Rules

Rule 1 Scope of Rules

(a) Scope of Rules. These rules govern procedure in appeals to the Appellate Division of the State Court from the State Court Trial Division for review and enforcement of orders of administrative agencies, boards, commissions, and officers of the State of Yap and in applications for writs or other relief which the State Court Appellate Division or a justice thereof is competent to give.

(b) Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the State Court Appellate Division as established by law.

Rule 2. Suspension of Rules

In the interest of expediting decision, or for other good cause shown, the Appellate Division may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its discretion.

## II. Appeals from Judgments and Orders of Lower Courts

Rule 3. Appeal as of Right - How Taken

(a) Filing the Notice of Appeal. An appeal permitted by law as of right shall be taken by filing a notice of appeal with a clerk of the court appealed from within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of the Trial Division of the State Court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Appellate Division upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the Notice of Appeal. The clerk of the court appealed from shall serve notice of the filing of a notice of appeal by mailing or delivering a copy thereof to the attorney or trial counselor of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address; and the clerk shall transmit a copy of the notice of appeal and of the docket entries to the clerk of the Appellate Division. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him, either by personal service, by

mail addressed to him, or by delivery. Failure of the clerk to serve notice shall not affect the validity of the appeal. The clerk shall note in the docket the names of the parties to whom he mails, personally serves, or delivers copies, with the date thereof.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal, the appellant shall pay to the clerk of the court appealed from such fees as may be established by statute or by court rule.

Rule 4. Appeal as of Right - When Taken

(a) Appeals in Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right the notice of appeal required by Rule 3 shall be filed with the clerk of the Trial Division within 30 days after the date of the entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the Appellate Division, the clerk of the Appellate Division shall note thereon the date on which it was received and transmit it to the clerk of the Trial Division and it shall be deemed filed in the Trial Division on the date so noted.

(2) Except as provided in (a)(4) of this Rule 4, a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If a timely motion under the Rules of Civil Procedure is filed in the Trial Division by any party: (A) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (B) under Rule 59 to alter or amend the judgment, or (C) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

(5) The Trial Division, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Rules of Civil Procedure. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rule 58 and 79(a) of the Rules of Civil Procedure.

(b) Appeals in Criminal Cases. In a criminal case the notice of appeal by a defendant shall be filed in the court appealed from within 10 days after the entry of the judgment or

order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the government is authorized by statute, the notice of appeal shall be filed in the court appealed from within 30 days after the entry of the judgment or order appealed from. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. Upon a showing of excusable neglect the court appealed from may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

Rule 5. Appeals by Permission

(a) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed in (e) of this rule may be sought by filing a petition for permission to appeal with the clerk of the Appellate Division within 10 days after the entry of such order with proof of service on all other parties to the action in the court from which the appeal is being taken. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended,

(b) Content of Petition; Answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Trial Division; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of Papers; Number of Copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) Grant of Permission; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the Clerk of the Trial Division the fees established by statute; and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the Trial Division shall notify the clerk of the Appellate Division of the payment of the fees. Upon receipt of such notice the clerk of the Appellate Division shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

(e) When a justice, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a compelling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Appellate Division may thereupon, in its

discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of the order: provided, however, that application for appeal hereunder shall not stay proceedings in the Trial Division unless the justice in the Trial Division or the Appellate Division or a justice thereof shall so order.

Rule 6. Vacant (Appeals by Allowance in Bankruptcy Proceedings)

Rule 7. Bond for Costs on Appeal in Civil Cases

The court appealed from may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

Rule 8. Stay or Injunction Pending Appeal

(a) Stay Must Ordinarily be Sought in the First Instance in the Court Appealed From; Motion for Stay in the State Court Appellate Division. Application for a stay of the judgment or order of the court appealed from pending appeal, or for approval of a supersedes bonds, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Trial Division. A motion for such relief may be made to the Appellate Division or to a justice thereof, but the motion shall show that application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the records as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the State Court.

(b) Stay May be Conditioned upon Giving of Bond; Proceedings Against Sureties. Relief available in the Appellate Division under this rule may be conditioned upon the filing of a bond or other appropriate security in the court appealed from. If 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 appealed from and irrevocably appoints the clerk of the court appealed from 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 in the court appealed from without the necessity of an independent action. The motion and such notice of the motion as the court appealed from prescribes may be served on the clerk of that court, who shall forthwith mail, personally serve, or deliver copies to the sureties if their addresses are known.

(c) Stays in Criminal Cases. Stays in criminal cases shall be had in accordance with the provisions of Rule 38(a) of the Rules of Criminal Procedure.

Rule 9. Release in Criminal Cases

(a) Appeals from Orders Respecting Release Entered Prior to a Judgment of Conviction. An appeal authorized by law from an order refusing or imposing conditions of release

shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the court appealed from shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals or a judge thereof may order the release of the appellant pending the appeal.

(b) Release Pending Appeal from a Judgment of Conviction. Application for release after a judgment of conviction shall be made in the first instance in the Trial Division. If the Trial Division refuses release pending appeal, or imposes conditions of release, the Trial Division shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Appellate Division or to a justice thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Appellate Division or a justice thereof may order the release of the appellant pending disposition of the motion.

(c) Criteria for Release. The decision as to release pending appeal shall be made in accordance with the applicable statute. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The original papers and exhibits filed in the Trial Division, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Trial Division shall constitute the record on appeal in all cases.

(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript is Ordered.

(1) Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the clerk of the Trial Division. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in (b)(1) of this Rule 10, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the court appealed from for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) Statement of the Evidence, or Proceedings When No Report Was Made or When the Transcript is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 20 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court appealed from for settlement and approval and as settled and approved shall be included by the clerk of the court appealed from in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the court appealed from and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the court appealed from and shall then be certified to the Appellate Division as the record on appeal and transmitted thereto by the clerk of the court appealed from within the time provided by Rule 11.

(e) Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the court appealed from, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the court appealed from either before or after the record is transmitted to the Appellate Division, or the Appellate Division, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Appellate Division.

Rule 11. Transmission of the Record

(a) Duty of Appellant. After filing the notice of appeal the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) Duty of Reporter to Prepare and File Transcript; Notice to the Appellate Division; Duty of Clerk to Transmit the Record. Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that he has received it and the date on which he expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the Appellate Division. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the Appellate Division and the action of the clerk of the Appellate Division shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the Appellate Division shall notify the Trial Division Justice and take such other steps as may be directed by the Appellate Division. Upon completion of the transcript the reporter shall file it with the

clerk of the court appealed from and shall notify the clerk of the Appellate Division that he has done so.

When the record is complete for purposes of the appeal, the clerk of the court appealed from shall transmit it forthwith to the clerk of the Appellate Division. The clerk of the Trial Division shall number the documents comprising the record with all documents arranged in chronological order by date of filing and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the Appellate Division may designate, shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the Appellate Division. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary Retention of Record in the Court Appealed from or Use in Preparing Appellate Papers. Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the court appealed from on motion of any party may order, that the clerk of the court appealed from shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the court appealed from shall certify to the clerk of the Appellate Division that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the Appellate Division to transmit the record.

(d) Vacant. (Abrogated)

(e) Retention of the Record in the Court Appealed from by Order of Court. The Appellate Division may provide by order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the court appealed from for use there pending the appeal, the court appealed from may make an order to that effect, and the clerk of the court appealed from shall retain the record or parts thereof subject to the request of the Appellate Division, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the court appealed from shall allow and copies of such parts as the parties may designate.

(f) Stipulation of Parties that Parts of the Record Be Retained in the Court Appealed From. The parties may agree by written stipulation filed in the court appealed from that designated parts of the record shall be retained in the court appealed from unless thereafter the Appellate Division shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) Record for Preliminary Hearing in the Appellate Division. If prior to the time the record is transmitted a party desires to make in the Appellate Division a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the court appealed from at the request of any party shall transmit to the Appellate Division such parts of the original record as any party shall designate.

Rule 12. Docketing the Appeal; Filing of the Record

(a) Docketing the Appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the Trial Division pursuant to Rule 3(d), the clerk of the Appellate Division shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Trial Division, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title.

(b) Filing of the Record, Partial Record, or Certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), the clerk of the Appellate Division shall file it and shall immediately give notice to all parties of the date on which it was filed.

(c) Duplication and Distribution. Immediately upon receipt of the record, the clerk of the Appellate Division shall duplicate the entire record paid for by the appellant and distribute three copies to the justices and additional copies shall be made for each party requesting it at his own expense.

Rule 13. Vacant (Review of Decisions of the Tax Court)

Rule 14. Vacant (Applicability of other Rules to Review of Decisions of the Tax Court)

Rule 15 to 20. Vacant

Rule 21. Writs of Mandamus and Prohibition Directed to Justice or Justices and Other Extraordinary Writs

(a) Mandamus or Prohibition to a Justice or Justices; Petition or Writ; Service and Filing. Application for a writ of mandamus or of prohibition directed to a justice or justices shall be made by filing a petition therefor with the clerk of the Appellate Division with proof of service on the respondent justice or justices and on all parties to the action in the trial court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; Order Directing Answer. If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondent(s) within the time fixed by the order. The order shall be served by the clerk on the justice or justices named respondent(s) and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the justice or justices named respondent(s) do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) Other Extraordinary Writs. Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the Appellate Division with proof of service on the parties named as

respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

(d) Form of Papers; Number of Copies. All papers shall be typewritten. Three copies shall be filed with the original, but the court may direct that additional copies be furnished.

Rule 22. Habeas Corpus Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus shall be made to the Trial Division. If an application is made to or transferred to the Trial Division and denied, the proper remedy is by appeal to the Appellate Division from the order of the Trial Division denying the writ.

(b) Vacated.

Rule 23. Custody of Prisoners in Habeas Corpus Proceedings

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding which was commenced before a justice of the State Court for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or Release of Prisoner Pending Review of Decision Failing to Release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his recognizance, with or without surety, as may appear fitting.

(c) Release of Prisoner Pending Review of Decision Ordering Release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his recognizance, with or without surety, unless the court rendering the decision shall otherwise order.

(d) Modification of Initial Order Respecting Custody. An initial order respecting the custody or release of the prisoner and any recognizance or surety taken, shall govern review in the Appellate Division unless for special reasons shown to a justice of the Appellate Division, the order shall be modified, or an independent order respecting custody, release or. surety shall be made.

Rule 24. Proceedings in Forma Pauperis

(a) Leave to Proceed on Appeal in Forma Pauperis. A party who desires to proceed on appeal in forma pauperis shall file in the court appealed from a motion for leave so to proceed, together with an affidavit showing, in the detail prescribed by Form 4 of the Appendix of Forms, his inability to pay fees and costs or to give security therefor, his belief that he is entitled to redress, and a statement of the issues which he intends to present on appeal. If the motion is granted the party may proceed without further application to the Appellate Division and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the court appealed from shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the court appealed from in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the court appealed from shall find that the party is not entitled so to proceed, in which event the court appealed from shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the court appealed from, or if the court appealed from shall find that the party is not entitled to proceed in forma pauperis, the clerk of that court shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the Appellate Division within 30 days after service of notice of the action of the court appealed from. The motion shall be accompanied by a copy of the affidavit filed in the court appealed from or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the court appealed from and by a copy of the statement of reasons given by the court appealed from for its action.

(b) Vacated. (Leave to Proceed on Appeal or Review in Forma Pauperis in Administrative Agency)

(c) Vacated. (Form of Briefs, Appendices and Other Papers)

Rule 25. Filing and Service

(a) Filing. Papers required or permitted to be filed in the Appellate Division shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief which may be granted by a single justice, the justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the clerk.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by an attorney or trial counselor shall be made on counsel.

(c) Manner of Service. Service may be personal or by mail. Personal service includes delivery of, the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

Rule 26. Computation and Extension of Time.

(a) Computation of Time. In computing any period of time prescribed by these rules, by an 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. The last day of

the period shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, 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 "legal holiday" includes any day appointed as a holiday by the State of Yap, or the President or Congress of the Federated States of Micronesia.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, an order of an administrative agency, board, commission or officer of the State of Yap, except as specifically authorized by law.

(c) Additional Time after Service by Mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, 6 days shall be added to the prescribed period.

Rule 27. Motions

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order, for which see subdivision (b), within 7 days after service of the motion, but motions authorized by Rules 8, 9 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b) may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request reconsideration, vacation or modification of such action.

(c) Power of a Single Justice to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single justice of the Appellate Division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Appellate Division may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice may be reviewed by the court.

(d) Form of Papers; Numbers of Copies. All papers relating to motions shall be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

Rule 28. Briefs

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Attorney or trial counselor will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the' designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee", "the injured person", "the taxpayer", "the ship", "the stevedore", etc.

(e) References in Briefs to the Record. References in the briefs shall be to the pages of each document contained in the record prepared by the clerk in accordance with the requirements of Rule 11(b) of the Rules of Appellate Procedure. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, Etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) Length of Briefs. Except by permission of the court principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc.

(h) Briefs in Cases Involving Cross Appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rule 31,

unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the-letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Rule 29. Brief of an Amicus Curiae

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the State of Yap, or an officer or agency thereof. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

Rule 30. Vacated (Appendix to the Briefs)

Rule 31. Filing and Service of Briefs

(a) Time for Serving and Filing Briefs. The appellant shall serve and file his brief within 40 days after the date, on which the record is filed. The appellee shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. The Appellate Division is prepared to consider cases on the merits promptly after briefs are filed, and may shorten the periods prescribed above for serving and filing briefs, either by rule for classes of cases, or by order for specific cases.

(b) Number of Copies to be Filed and Served. Six copies of each brief shall be filed with the clerk, unless the court shall direct a different number. One copy shall be served on the attorney or trial counselor for each party separately represented.

(c) Consequence of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the court.

Rule 32. Form of Briefs (the Appendix) and Other Papers

(a) Form of Briefs. Briefs may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text.

If the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The front covers of the briefs shall contain: (1) the name of the court and the Appellate Division number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review), (4) the title of the document (e.g., Brief for Appellant) and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) Form of Other Papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

Rule 33. Prehearing Conference

The court may direct the attorneys or trial counselors for the parties to appear before the court or a justice thereof for a prehearing conference to consider the simplification of the issues and-such other matters as may aid in the disposition of the proceeding by the court. The court or justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Rule 34. Oral Argument

(a) In General; Oral Argument Allowed. Oral argument shall be allowed in all cases unless the Appellate Division, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed.

Oral argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk shall advise all parties of the time and place of oral argument and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Attorney or trial counselor will not be permitted to read at length from briefs, records or authorities.

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-Appearance of Parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on Briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After argument counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule 35. Vacated (Determination of Causes by the Court in Banc)

Rule 36. Entry of Judgment and Written Opinion

(a) Judgment. The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

(b) Opinions of the Court. All opinions of the court shall be printed, unless otherwise ordered, under the supervision of the judge writing the opinion, and shall be rendered by being filed with the clerk of court. The clerk shall preserve the original opinions.

(1) Bound. The clerk shall from time to time cause copies of the opinions to be bound into volumes.

(2) Order Form of Decision. The State Court may, while according full consideration of the issues, dispense with opinions where the issues occasion no

need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, e.g., affirmance by order of a decision or judgment of the court, or a judgment of affirmance or reversal, containing a notation of precedents.

Rule 37. Interest on Judgments

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the court appealed from. If a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate shall contain instructions with respect to allowance of interest.

Rule 38. Damages for Delay

If the Appellate Division shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Rule 39. Costs

(a) To Whom Allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) Costs For and Against the State of Yap. In cases involving the State of Yap or an agency or officer thereof, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded against the State.

(c) Costs of Briefs and Copies of Records. The cost of printing or otherwise producing necessary copies of briefs, or copies of records shall be taxable in the Appellate Division at rates not higher than those generally charged for such work in the area where the clerk's office is located.

(d) Bill of Costs; Objections; Costs to Be Inserted in Mandate or Added Later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the Appellate Division for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the Appellate Division to the clerk of the Trial Division.

(e) Costs on Appeal Taxable in the State Court Trial. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall

be taxed in the Trial Division as costs of the appeal in favor of the party entitled to costs under this rule.

Rule 40. Petition for Rehearing

(a) Time for Filing; Content; Answers Action by Court if Granted. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition may not be permitted by order of the court. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court a petition for rehearing shall not exceed 15 pages.

Rule 41. Issuance of Mandate; Stay of Mandate

(a) Date of Issuance. The mandate of the court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless. the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) Stay of Mandate Pending Application for Certiorari. A stay of the mandate pending application to the Federated States of Micronesia Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Appellate Division, Federated States of Micronesia Supreme Court, a notice that the party who has obtained the stay has filed a petition for the writ, the stay shall continue until final disposition. Upon the filing of a copy of an order of the Appellate Division denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

Rule 42. Voluntary Dismissal

(a) Dismissal in the Trial Division. If the parties to an appeal or other proceeding shall sign and file with the clerk of the Appellate Division an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

Rule 43. Substitution of Parties

(a) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Appellate Division, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the Appellate Division. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Appellate Division may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the court appealed from but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Appellate Division in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal' representative, by his attorney or trial counselor of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Appellate Division in accordance with this subdivision.

(b) Substitution for Other Causes. If substitution of a party in the Appellate Division is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

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

(1) When a public officer is a party to an appeal or other proceeding in the Appellate Division 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 is a party to an appeal or other proceeding 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.

Rule 44. Cases Involving Constitutional Questions where State of Yap is Not a Party

It shall be the duty of a party who draws in question the constitutionality of any statute of the State Legislature in any proceeding in the Appellate Division to which the State of Yap, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Appellate Division, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

Rule 45. Duties of Clerks

(a) General Provisions. No clerk of court shall practice as an attorney or as trial counselor in any court while he continues in office. The Appellate Division shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with a clerk in attendance shall be

open during business hours on all days except Saturdays, Sundays and legal holidays, but the court may order that the office of the clerk shall be open for specified hours on Saturdays, Sundays, or on any other legal holidays.

(b) The Docket; Calendar; Other Records Required. The clerk shall keep a book known as the docket, in such form and style as may be prescribed by the Chief Justice of the State Court and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders and judgments shall be entered chronologically in the docket on the folio assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, he shall give preference to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required from time to time by the Chief Justice.

(c) Notice of Orders of Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail, personal service, or delivery upon each party to the proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket thereof. Service on a party represented by counsel shall be made on counsel.

(d) Custody of Records and Papers. The clerk shall have custody of the records and papers of the court. He shall not permit any original record or paper to be taken from his custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and other printed papers filed.

Rule 46. Vacated (Attorneys - State Bar Rules)

Rule 47. Vacated (Rules by Courts of Appeals)

Rule 48. Title

These rules shall be known and cited as the Rules of Appellate Procedure for the State Court of Yap. The form of abbreviated citation is: Rule XX, R. App. P.

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**Notes on the Rules of Appellate Procedure for the State Court of Yap**

[1] General Court Order (GCO) 1982-1 approved the Rules of Appellate Procedure. GCO 1982-1 became effective on March 8, 1982. There are no other general court orders involving the Rules of Appellate Procedure; thus, no amendments have been made to the Rules of Appellate Procedure since their adoption.

# Yap State Court
# Rules of Small Claims Procedure

# RULES OF SMALL CLAIMS PROCEDURE FOR THE STATE COURT OF YAP[1]

Rule 1. Definition of a Small Claim

For the purpose of application of the Small Claim Procedure, a small claim is a civil action based on either tort or contract for monetary relief not in excess of $5,000.00, exclusive of interest and costs. The Small Claims Procedure cannot be used for land disputes, determination of real property boundaries, injunctions, declaratory judgments, or disputes involving traditional forms of money.

Rule 2. Use of Small Claims Procedure

The use of Small Claim Procedure is optional. At the time a party files a civil action that falls within the definition of a small claim, the Clerk of Court shall inform the party of the small claims Procedure and shall ask the party whether the party wants the civil action to proceed as a small claim. If the party states that they want to use the Small Claims Procedure, Yap State Court Small Claims Procedure Rules shall apply. If the party states that they do not want to use the Small Claims Procedure, the Yap State Court Rules of Civil Procedure shall apply.

Rule 3. Use of Legal Counsel

The use of legal counsel by the party is optional. A corporation or other organization may appear through legal counsel or through an officer, director, manager, employee, or agent. To the extent that the representative of the organization does not have personal knowledge of the small claim, the representative shall bring to the hearing other persons who have personal knowledge of the facts sought to be proven by that organization.

Rule 4. Commencement of Action

(1) An action on a small claim shall be commenced by filing with the Clerk of Court a short and simple complaint setting forth (a) plaintiff's name, residence address, or business or employment address, and telephone number, (b) defendant's name and place of residence, or place of business or regular employment, (c) the nature and amount of the plaintiff's claim, giving dates and other relevant information, and (d) signed by the plaintiff.

(2) A small claims complaint may be given orally to the Clerk of Court who shall reduce the small claim into writing. The information given to the Clerk of Court must include the information set forth in subsection (1)(a)-(d). The complaint must be signed by the plaintiff.

(3) If the claim is based upon a written instrument, a copy of the written instrument must be attached to the complaint.

Rule 5. Form of Summons

Summons in small claims shall require each defendant to appear on a date specified in the summons not less than 7 or more than 30 days after the issuance of the summons.

Rule 6. Service of Summons

The Clerk of Court shall cause the summons and complaint to be served on the defendant. Where the Government of the State of Yap or any agency, department or instrumentality thereof is a defendant, service shall be made to the Yap State Office of the Attorney General, and to the defendant government agency, department or instrumentality. The Clerk of Court shall document in the small claims file the date and time service was made, the place where service was made, the name of the individual to whom service was made, and the name of the individual who made service.[2]

Rule 7. Removal to Trial Division

(1) The defendant may remove the action to the Trial Division of the Yap State Court (a) if the plaintiff's claim is not a small claim as defined in Rule 1 or (b) if the defendant files a counterclaim in excess of $10,000.00.

(2) To remove an action, defendant shall inform the court on the first court date that the defendant wants to remove the small claim to the Trial Division of the Yap State Court and the grounds therefore.

(3) The court shall order removal (a) if the plaintiff's claim is not a small claim as defined in Rule 1 or (b) if the court determines that defendant has a bona fide counterclaim in excess of $10,000.00.

(4) The court presiding over the small claim can on its own motion order the action removed to the Trial Division of the Yap State Court if the court determines that the plaintiff's claim is not a small claim as defined in Rule 1.

(5) As part of the order removing an action to the Trial Division of the Yap State Court, the court shall set a date by which the plaintiff must file a complaint in compliance with the Yap State Court Rules of Civil Procedure. Service on the defendant shall be the same as an amended complaint. The defendant shall not be resummoned.

Rule 8. Appearance and Trial

(1) The defendant in a small claim must appear at the time and place specified in the summons and the case shall be tried on the day set for the appearance unless otherwise ordered. If the defendant appears, he need not file an answer unless ordered to do so by the court; and when no answer is ordered the allegations of the complaint will be considered denied and any defense may be proved as if it were specifically pleaded. In the event that the defendant has a counterclaim, the counterclaim shall be filed with the Clerk of the Trial Division not later than two days before the scheduled appearance stated in the summons. A party shall be entitled to raise all available defenses; provided that all defenses, if any, must be raised at the time of the hearing on the merits. The substance of the defense shall be noted in the court file.[3]

(2) The court shall make an earnest effort to help the parties reach settlement. The settlement discussions will not be recorded and shall not become a part of the record.[4]

(3) If the claim, or any counterclaim made, involves a number of items, the court may require either party making such claim to present to the court and to the

opposing party a written list of the items claimed, showing their respective dates and amounts.

(4) In any small claims case, the court shall adjudicate the dispute at an informal hearing. At the informal hearing, all relevant evidence shall be admissible and the court may relax the rules of procedure. Technical rules of evidence shall not apply, except those relating to privileges. The court may call any person present at the hearing to testify and shall conduct the examination of witnesses. The court, on its own motion or at the request of a party, shall subpoena witnesses and tangible evidence, when such witnesses or evidence are relevant and material to the hearing.

(5) Witnesses shall be sworn.

(6) Evidence shall be taken stenographically or by recording machine.

(7) Absent an allegation of fraud or a statute or court rule requiring a higher standard, the standard of proof in a small claims proceeding shall be a preponderance of the evidence.

(8) Within five days of the conclusion of the hearing, the court shall either render judgment and explain the reasons therefor to all parties or inform the parties that more time is needed to render judgment. In the event that more time is needed, the court must render judgment within twenty days of the conclusion of the hearing.[5]

Rule 9. Necessary Parties

The court shall have the authority at any point during the small claims hearing to order that a person who is a necessary party as defined by the Yap State Court Civil Procedure Rule 19(a) be joined as a party to the small claim.

Rule 10. Government as a Party

The Government may not file a claim or appear as a plaintiff in a small claim. The Government may appear as a defendant and, in the interest of judicial economy, may file a counterclaim which is related to the small claim brought by the plaintiff. The Government includes the State of Yap and any agency, department, or instrumentality thereof, the Federated States of Micronesia and any agency, department or instrumentality thereof, and the government of any foreign country and any agency, department, or instrumentality thereof. Government shall not include a village or municipality.

Rule 11. Discovery, Depositions, and Motions

(1) No depositions shall be taken or interrogatories or other discovery proceeding or requests to admit shall be used in small claims cases except by order of the court.

(2) No motion shall be filed in small claims cases prior to the court rendering judgment without prior leave of the court. This subsection does not preclude parties from filing motions after judgment, including but not limited to, motions for order in aid of judgment.[6]

Rule 12. Installment Payment of Judgments

The court may order that the amount of a small claim judgment shall be paid to the prevailing party on a certain date or in specified installments, and may stay enforcement of the judgment and

other supplementary process during compliance with such order. The stay may be modified or vacated by the court, but the installment payments of small claims judgments shall not extend over a period in excess of three years duration.

Rule 13. Default Judgment

If a defendant who has been properly served fails to appear, either personally or by counsel, the court may enter a default judgment where the small claim is for a clearly determined amount of money or on proof by the plaintiff of the amount due if the claim is for money damages or any amount that is not clearly determined.

Rule 14. Dismissal for Want of Prosecution

If the plaintiff fails to appear, either personally or by counsel, the small claim may be dismissed for want of prosecution, or the defendant may proceed to trial on the merits, or the action may be continued, as the court may direct. If both parties fail to appear, the court may order the small claim dismissed for want of prosecution or may take other disposition thereof that justice may require.

Rule 15. Other Procedure

All matters in small claims proceedings which are not covered by the Small Claims Procedure shall be governed by the Yap State Court Rules of Civil Procedure.

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**Notes on the Rules of Small Claims Procedure for the State Court of Yap**

[1] The Small Claims Section of the Trial Division of the Yap State Court was established through General Court Order 2001-004 and took effect on October 1, 2001.

[2] As amended by GCO 2005-002. In its original form, Rule 6 did not specify the proper method for service of summons upon the state government when the state government is a defendant. Accordingly, General Court Order 2005-002 amended Rule 6 by adding the second sentence. The other portions of Rule 6, namely the first and last sentences, remain unchanged.

[3] As amended by GCO 2010-002. In its original form, Rule 8(1) contained the following sentence: "Immediately prior to trial, the court shall ask the defendant to state any defense he may have." After finding that this procedure was unnecessary to preserve the defendant's right to present a defense, given the other portions of the rule, the Court issued General Court Order 2010-002, which deleted the sentence. The other portions of Rule 8(1) remain unchanged.

[4] As amended by GCO 2010-002. In its original form, Rule 8(2) required the court to hold a pretrial conference if the parties were unable to reach settlement. Specifically, the first sentence of Rule 8(2) in its original form read as follows: "Prior to the commencement of the trial, the court shall make an earnest effort to help the parties reach settlement without trial, or, failing that, to agree upon as many of the issues as possible at a pre-trial conference, but no pre-trial order will be required." After finding that a pretrial conference was both unnecessary and at odds with the purpose of the small claims section, namely to establish a simple adjudication scheme for small claims, the Court issued General Court Order 2010-002, which deleted the pretrial conference requirement. Similarly, General Court Order 2010-002 deleted the requirement that the court shall make an effort to help the parties reach settlement "prior to the commencement of the trial," thus, giving the court the option of helping the parties reach settlement either before or during the small claims hearing. The remaining portions of Rule 8(2) remain unchanged.

[5] As amended by GCO 2010-002. In its original form, Rule 8(8) mandated the court to render judgment within five days after the conclusion of the small claims hearing. Recognizing the reality that a judge presiding over a small claims case may need more time, the Court issued General Court Order 2010-002, which amended the rule to require the judge to render judgment within five days *or* explain to the parties, within five days, that more time is needed to render a judgment. Furthermore, if the court informs the

parties that more time is needed, it must render judgment within twenty days. General Court Order 2010-002 also eliminated the requirement that the court must explain appellate procedure to the parties, as requiring such an explanation is time-consuming and inefficient for the court.

[6] As amended by GCO 2010-002. In its original form, Rule 11(2) prohibited parties from submitting any motion, either before or after judgment, without prior leave of the court. Recognizing that parties often need the court's help in collecting judgment, the Court issued General Court Order 2010-002, which amended Rule 11(2) by prohibiting parties from filing motions prior to the court rendering judgment without prior leave of court but allowing parties to file post-judgment motions, such as motions for order in aid of judgment, without the court's permission.

# Yap State Court

# Rules of Procedure for Appealing Small Claims Final Decisions

# RULES OF PROCEDURE FOR APPEALING SMALL CLAIMS FINAL DECISIONS FOR THE STATE COURT OF YAP[1]

Rule 1. Scope of Rules

These rules are intended to be simple and to govern procedures in appeals to the Appellate Division of the State Court from the Small Claims Section.

Rule 2. Trial Judge; Legal Representation

One justice shall hear an appeal from a final decision of a small claim. No justice may hear or decide an appeal of a case heard by him in the Trial Division. Legal representation of parties in an appeal shall be optional.

Rule 3. Parties; Standard of Review

The party requesting the appeal of a final decision of a small claim shall be the appellant. The party responding to appellant's request to appeal shall be the appellee. The appellant shall have the burden of persuasion on appeal. The standard of review on appeal is whether the final decision is supported by sufficient evidence in the record.

Rule 4. Notice of Appeal; Statements; Notices

An appeal from a final decision of a small claim shall be effected by (1) appellant informing the Clerk of the Trial Division and (2) appellant filing three (3) copies of a statement of appeal with the Clerk of the Trial Division within ten (10) calendar days from the date of entry of the final decision. The statement of appeal shall identify the points which were improperly considered by the judge or why the judge's decision was wrong, and providing reasons under law, evidence, or custom and tradition which support the contention that the decision was wrong. Newly discovered evidence shall not be included in the statement of appeal. Upon being informed by a party in a small claim of the intent to appeal, the Clerk of the Trial Division shall immediately inform the appellee of appellant's intent to appeal and shall inform the Chief Justice of the State Court for the purpose of assigning the justice to hear the particular appeal. The Clerk of the Trial Division shall note the intent to appeal on the docket sheet. Further, upon receiving the statement, the Clerk of the Trial Division shall provide the justice hearing the appeal a copy of the statement and shall serve a copy on appellee.

Rule 5. Stay Pending Appeal; Security

The giving of a notice of appeal to the Clerk of the Trial Division shall stay the execution of or proceedings to enforce a final decision pending the appeal. A judge whose decision is being appealed may require an appellant to provide security in such reasonable form and amount necessary to ensure payment of costs on appeal.

Rule 6. Record in Appeal

The tape recording of the small claim proceedings and admitted exhibits shall become the record on appeal. The Clerk of the Trial Division shall make the tapes of the proceedings accessible to the parties at the courthouse.

Rule 7. Counter Statements; Notices; Hearing Schedules

Within ten (10) calendar days of receiving appellant's statement of appeal from the Clerk of the Trial Division, appellee may file three (3) copies of a counter statement with the Clerk of the Trial Division. The counter statement shall respond to appellant's statement of appeal and explain why the judge's decision was correct. Newly discovered evidence shall not be included in the counter statement. In the event that appellee will not be filing a counter statement, appellee shall so inform the Clerk of the Trial Division. Upon receiving the counter statement, the Clerk of the Trial Division shall provide the justice hearing the appeal a copy of the counter statement and shall serve a copy on appellant. The Clerk shall schedule the appeal for hearing within ten (10) days of the filing of the counter statement. When appellee has informed the Clerk of the Trial Division that no counter statement will be filed, the Clerk of the Trial Division shall inform the justice hearing the appeal and shall also inform the appellant, and prepare to schedule the appeal for hearing within ten (10) days from when the counter statement is due.

Rule 8. Mandatory Hearings; Presentation

A hearing shall be held for every case on appeal whereby the parties may be heard. At the hearing, the appellant shall be allowed to make the first presentation and to be followed by appellee's presentation.

Rule 9. Announcements of Decisions; Time for Reducing Decisions into Writing

The decision, order, or ruling in an appeal shall be announced no later than ten (10) days of the day of oral argument. An oral decision, order, or ruling shall be reduced into writing containing the reasons and bases therefore and entered by the Clerk of the Trial Division within ten (10) days of the rendering of the oral decision. The Clerk of the Trial Division shall immediately cause copies to be delivered to the parties.

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**Notes on the Rules of Procedure for Appealing Small Claims Final Decisions for the State Court of Yap**

[1] The Small Claims Section of the Trial Division of the Yap State Court was established through General Court Order 2001-004 and took effect on October 1, 2001. The Rules for Procedure for Appealing Small Claims Final Decisions were adopted under General Court Order 2001-004.

# Yap State Court

# Rules of the State Bar

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# State Bar Association Ethics Complaint Procedure Rules

**RULES OF THE STATE BAR OF YAP**

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# RULES OF THE STATE BAR OF YAP[1]

## Statement of Purpose and Policy

The purpose of these rules is twofold: to regulate the practice of law for the benefit of the people of the State of Yap and to promote the development of an informed, stable and responsible legal profession in this state.

These rules are based upon the following principal findings:

(1) The practice of law is a function of vital importance to the people of this State; a competent and honest legal profession is essential to the orderly and efficient administration of justice and the conduct of both public and private affairs; and

(2) The legal needs of public agencies and private citizens in this state differ in significant ways from those in other jurisdictions; and

(3) There is at the present time a serious shortage in the number of attorneys in this state and that shortage is likely to exist for some time; and

(4) It is in the best interest of the people of this state for this Court to encourage citizens of the state to choose a career in law, to obtain a formal legal education and return to serve in public and private capacities in the legal profession; and

(5) In light of the great need for legal services and the limited availability of attorneys, it will be necessary to make special provisions for admission to the State Bar of Yap of some non-lawyers and of some attorneys from elsewhere who are employed by a public or quasi-public agency within the state; these special provisions should be temporary in nature and should be considered to be an unavoidable exception to the necessity of establishing and maintaining a legal profession which is an integral part of the society of this state; and

(6) It is essential to the maintenance of high standards of competence and responsibility and to the prompt and efficient administration of justice that all members of the legal profession be actual residents or citizens of this state; and

(7) The people of this state will be best served by a legal profession which consists of practitioners, with proven good moral character, who are members of this society, whether by birth or by choice, and who are committed to faithful and diligent service in the high calling of attorney or counselor at law.

## Rule 1. Establishment of State Bar

The State Bar of Yap is hereby established.

## Rule 2. Authority of State Court

The State Court has the primary responsibility for defining and regulating the practice of law in this state, in conjunction with any appropriate state statutes, and shall do so by the promulgation of rules governing admission to the bar and the conduct of persons authorized to practice law.

## Rule 3. Membership and Annual Dues Required[2]

(a) Membership. No person shall practice law in this state unless he or she is a member in good standing of the State Bar of Yap, except as provided in Rule 14.

(b) Annual Dues. Each member of the Yap State Bar must pay an annual fee in order to keep his membership status current. The annual fee will be payable by the fifteenth day of April of each year. The annual fee will be $10 for all trial counselors and $20 for all lawyers and Court officials. Trial counselors and attorneys who have been newly admitted to the Bar shall receive a waiver of the annual fee up to and including the first anniversary of their admission. Thereafter, they shall pay the annual fee on each successive April 15, as provided in the Section.

Rule 4. Admission of Members of Trust Territory and Supreme Court of the Federated State Bars

(a) High Court or FSM Supreme Court License. Any person who was admitted to practice before the High Court of the Trust Territory of the Pacific Islands or Supreme Court of Federated States on or before March 9, 1982, and is currently a member in good standing, is eligible for admission to the State Bar of Yap, provided that he or she is a resident or domiciliary of the State of Yap.

(b) Application and Fee. An application for admission under this rule shall be submitted to the State Court not later than May 1, 1983, in a form prescribed by the Court, and shall be accompanied by payment of a fee of twenty-five dollars ($25.00).

(c) Scope of Practice. An applicant admitted under this rule will be authorized to practice law in the State of Yap on the same basis and to the same extent as he or she was authorized to practice before the High Court of the Trust Territory.

Rule 5. Qualifications and Applications for Admission

(a) Qualifications. Except as otherwise provided in these rules, a person is eligible for membership in the State Bar of Yap if he or she possesses the following qualifications:

(1) Law School Diploma. The applicant shall be a graduate of a school of law which is accredited in the jurisdiction where the school is situated, except as provided in Rule 6, and

(2) Good Moral Character. The applicant shall be a person of good moral character and shall be fit to undertake the responsibilities of the practice of law, and

(3) No Criminal Convictions. The applicant shall not have been convicted of any crime involving moral turpitude, and

(4) Bar Examinations. The applicant shall successfully complete a general examination of his or her knowledge of the statutory and customary law of the State of Yap, except as provided in Rule 7, 8 or 9, and

(5) Residence or Domicile. The applicant shall be an actual resident or a domiciliary of the State of Yap, or shall have stated an intent to reside or to maintain a full-time law office in this state.

(b) Application. An applicant shall apply for admission and shall present satisfactory evidence of possession of the qualifications stated in subsection (a), in the manner prescribed by the State Court.

(c) Fee. The application for admission shall be accompanied by payment of fee of twenty-five dollars ($25.00).

(d) Effective Date. This rule shall govern all applications for admission from and after March 9, 1982, except for applications submitted pursuant to Rule 4.

Rule 6. Admission Without Law School Diploma

An applicant for admission who is otherwise qualified under Rule 5 may satisfy the requirement of a law school diploma prescribed by Rule 5(a)(1) by passing all courses approved by the State Bar and being certified by the Chief Justice of the State Court that he is qualified to practice law in the State. Courses are approved by the members of the State Bar present at a bar association meeting through consensus or, if necessary, majority vote.[3]

Rule 7. Admission Without Examination – Public Service

(a) Persons Excused. An applicant who is otherwise qualified for admission under Rule 5 is excused from taking the examination prescribed by Rule 5(a)(4) if he or she is a member of one of the following special classes of person:

(1) State Employees. Attorneys employed by the State of Yap or one of its branches, agencies or instrumentalities; or

(2) Federal Employees. Attorneys employed by the Federated States of Micronesia to reside and work in this state; or

(3) Legal Services Employees. Attorneys employed by the Micronesian Legal Service Corporation, or

(b) Required License. An applicant seeking admission under this rule must be a member in good standing of the bar of one of the several states of the United States, one of the states of the Federated States of Micronesia, or the Supreme Court of the Federated States of Micronesia.

Rule 8. Admission Without Examination – Attorneys from Another Jurisdiction

An applicant who is otherwise qualified for admission under Rule 5 is excused from taking the examination required by Rule 5(a)(4) if he or she satisfies the following requirements:

(a) Required License. The applicant must be a member in good standing of the bar of one of the states of the Federated States of Micronesia, Supreme Court of the Federated States, a state, territory, or commonwealth of the United States, the Republic of Belau, or the Marshall Islands; and

(b) Required Experience. The applicant must have been a member of the bar of his or her home jurisdiction for a period of at least two years prior to admission to the State Bar; and

(c) Reciprocity. The home jurisdiction of the applicant must permit members of the State Bar of Yap to be admitted to practice upon terms at least as favorable as those set forth in this rule.

Rule 9. Admission Without Examination – Citizens of the State of Yap

In order to encourage natural born or adopted citizens of the State of Yap to pursue a career in law, any Yapese citizen who is otherwise qualified for admission under Rule 5, shall be admitted without the necessity of taking the examination required by Rule 5(a)(4).

Rule 10. Bar Examining Committee

(a) General Examination and Frequency. The State Bar Examining Committee shall develop and administer the general examination required by Rule 5(a)(4) in a manner which fairly measures the relevant knowledge of the applicant. The examination may be written, or oral, or both. The examination shall be administered to applicants on Thursdays of the second week of August and March, and any other times determined by the court.

(b) State Bar Examining Committee. A State Bar Examining Committee is hereby established. The Chief Justice of the State Court is authorized to appoint five (5) members, in good standing, of the Bar to sit as members of this committee.

(1) Examination. The committee shall develop, write, and correct all General and Special Bar examinations.

(2) Power. The committee shall have power to examine all applicants for admission to practice law and to administer the requirements for admission to practice. The committee shall certify to the State Court for admission to practice law those persons, and only those persons who fulfill the requirements for admission to practice law provided in the Rules of the State Bar of Yap.

(3) Meetings. Meetings of the committee may be held at such place in the state and at such time as may be fixed by the committee. Notice of the time and place of all meetings shall be given at least one day prior, thereto, and such notice may be given by mail, or orally or by telephone.

(4) Quorum. Three members shall constitute a quorum of the committee for the transaction of business, except that less than five (5) members may adjourn from day to day.

(5) Subcommittee. The committee may act in any matter by a subcommittee composed of not less than two committee members, subject to the right of an applicant, upon written application filed within ten (10) days after being notified of any determination made by such a subcommittee, to have the same reviewed and determined by the committee.

(6) Investigations. In the conduct of investigations and upon the hearing of all matters, the committee, or any subcommittee, having jurisdiction may:

(A) Take and hear relevant evidence.

(B) Compel, by subpoena, the attendance of witnesses and the production of relevant books, papers, and documents.

(7) Oath. Any member of the committee, or of any subcommittee, having jurisdiction, may administer oaths and issue subpoenas. Depositions may be taken and used in the same manner as in civil cases.

(8) Contempt. Whenever any person subpoenaed to appear and give testimony or to produce relevant tangible information refuses to appear or testify before the committee, or a subcommittee, or to answer any pertinent and proper question, he is in contempt of the committee. The chairperson, or presiding member, of the committee shall report the fact that a person under subpoena is in contempt of the committee to the state court for so refusing to appear or testify as are provided by law.

(9) Notice. Notice, either oral or written, shall be given to an applicant of any determination affecting him; and notice to appear before the committee or a subcommittee shall be given, in a similar manner, to an applicant at least five (5) days prior to the time fixed therein for his appearance.

(10) Review. After registration either as a "general applicant" or as a "special applicant", any person refused certification to the State Court for admission to practice may have the action of the committee reviewed by, the State Court.

(11) Committee. The committee is empowered to appoint such committee in furtherance of the purposes of this Rule and to facilitate their administration as may be necessary or advisable.

(12) Tenure of Office of Committee. For the purpose of continuity two members of the State Bar Examining Committee shall serve for a period of one year, another two members for a period of two years, and the remaining member for a period of three years.

(c) Investigation and Cost. In its discretion, the Court may require an independent investigation of any pending application and may charge the cost of such investigation to the applicant.

Rule 11. Admissions Pro Hac Vice

(a) Appearance Permitted. An attorney who is a member of the bar of any other jurisdiction may be permitted to appear in the State Court in any proceeding for which the attorney has been engaged by one of the parties to the action.

(b) Duration. An admission under this rule shall be valid only for the appearance or proceeding for which it is granted.

(c) Association Required. An attorney seeking admission under this Rule shall be associated with a member of the State Bar of Yap, who shall be the attorney of record. The Court may, in its discretion, waive the requirement of this section.

Rule 12. Oath

(a) Content of Oath. Every applicant who is found by the Court to be qualified for admission to the State Bar of Yap, shall appear in open court and take an oath or affirmation in the following form:

> "I, [name of applicant], hereby solemnly swear [or affirm] that I will uphold the Charter [or Constitution] and laws of the State of Yap; that I will represent my client to the utmost of my ability; that I will faithfully abide by the Code of Professional Responsibility; and that I will at all times conduct myself in a manner to uphold the dignity of this Court and the honor of the legal profession."

(b) Enrollment. Upon the taking of the oath, the applicant shall be enrolled as a member of the State Bar of Yap.

(c) Pro Hac Vice Admissions. An attorney who is admitted pro hac vice, under Rule 11, shall take the oath prescribed by subsection (a) of this rule, but shall not be enrolled as a member of the State Bar.

Rule 13. Code of Professional Responsibility

(a) Observance Required. Every member of the State Bar of Yap shall conduct himself or herself in a manner consistent with the Code of Professional Responsibility as promulgated by the American Bar Association.

(b) Discipline or Disbarment. A member of the State Bar shall be subject to discipline or disbarment by the Court for violation of the Code of Professional Responsibility according to the written procedures that the Court establishes for that purpose.[4]

Rule 14. Scope of Applicability – Municipal

These rules shall not apply to appearances before the municipal courts nor to the practice of law in connection therewith.

Rule 15. Title

These rules shall be known and cited as the Rules of the State Bar of Yap. The form for an abbreviated citation shall be Rule _____, R.S.B.

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**Notes on the Rules of the State Bar of Yap**

[1] General Court Order 1982-1 approved the Rules of the State Bar. The Rules of the State Bar became effective on March 8, 1982.

[2] As amended by GCO 1990-1. In its original form, Rule 3 contained only the language found in now subsection (a) but did not contain any information regarding annual dues. General Court Order 1990-1 added subsection (b) and its language on annual dues, while also keeping Rule 3's original language as subsection (a). General Court Order 1990-1 stated that "[t]he principal purpose of these amendments are to provide for an integrated bar association and to promulgate a rule governing payment of an annual bar membership fee." The amended version of this Rule became effective on April 30, 1990.

[3] As amended by GCO 2008-001. In its previous form, Rule 6 referenced courses that were "offered by the State Bar." Because the State Bar does not regularly offer legal courses and because other entities, such as the College of Micronesia, are more equipped to do so, the Yap State Court issued General Court Order 2008-001 and changed "offered by the State Bar" to "approved by the State Bar." Furthermore, General Court Order 2008-001 added the second sentence of Rule 6 to explain how courses are "approved" by the State Bar. (It appears that Rule 6 was amended once prior to GCO 2008-001, but the court's records do not indicate when. The original version of Rule 6 was fairly lengthy and dealt with a "special examination" of the law of the State of Yap.)

[4] As amended by GCO 2012-002. In its original form, Rule 13(b) stated simply, "A member of the State Bar shall be subject to discipline or disbarment by the Court for violation of the Code of Professional Responsibility." General Court Order 2012-002 sought "to clarify the procedure by which the State Court of Yap may discipline counselors." Accordingly, General Court Order 2012-002 added the phrase "according to the written procedures that the Court establishes for that purpose" to the end of the sentence. General Court Order 2012-003 was adopted the same day, May 20, 2012, and spelled out the counselor disciplinary procedures referenced in Rule 13(b). The original disciplinary rules were then significantly amended by General Court Order 2013-002, which became effective on June 20, 2013.

## YAP STATE BAR ASSOCIATION ETHICS COMPLAINT PROCEDURE RULES[1]

Rule 1. Initiating a Complaint

Any person or entity may initiate an ethics investigation against a counselor by filing a Yap State Bar Association Counselor Grievance Form with the clerk's office of the Yap State Court. The Grievance Form is available at the Yap State Court clerk's office.[2]

Rule 2. Commencement of Disciplinary Proceedings

(a) Upon receipt of a grievance form, the Chief Justice of the Yap State Court or, in the case of a conflict of interest, an Associate Justice, shall, without unnecessary delay, evaluate the complaint and decide whether to further investigate it.

(b) If the Chief Justice or Associate Justice finds that the complaint should be further investigated, he or she shall, without unnecessary delay, appoint one member of the Yap State Bar Association as Disciplinary Counsel to investigate the complaint. The Disciplinary Counsel shall represent the interests of the Yap State Bar Association. In no event shall an employee of the Yap State Court be appointed as Disciplinary Counsel.

(c) After the Chief Justice has selected the Disciplinary Counsel, the Disciplinary Counsel shall, within 5 days of his or her selection, send a notice to the counselor under investigation that details the complaint and explains that an investigation is underway. The notice must also state that the counselor under investigation is permitted, on his or her behalf, to submit to the Disciplinary Counsel evidence and argument relative to the allegations in the complaint within five days of receipt of the notice.

(d) The Disciplinary Counsel shall investigate to the extent necessary the allegations of the complaint and shall submit within 30 days of his or her selection a written report of findings and recommendations to the reviewing justice. An extension of time for filing the report may be granted only for good cause shown.

Rule 3. Review by Justice

(a) Upon receipt of the Disciplinary Counsel's report, the reviewing justice shall, within ten days, determine what course of action to take.

(b) If the report concludes that the allegations of the complaint are unfounded or otherwise lacking in merit, and the justice agrees with the report's conclusion, then the justice shall dismiss the complaint and notify the counselor who was under investigation.

(c) If the report recommends disciplinary action or if the reviewing justice finds that the report justifies the taking of evidence and the finding of further facts, the justice shall set the matter for a hearing.

(d) Prior to the hearing, the Disciplinary Counsel and the counselor under investigation shall have a right to subpoena witnesses and compel discovery.

(e) Within ten days of the conclusion of the hearing, the justice shall (1) dismiss the complaint; (2) censure, suspend, or disbar the counselor under investigation in a written decision; or (3) inform the parties that more time is needed to render judgment. Any written decision must state findings of fact, conclusions of law,

the ethical rule violated, and the disciplinary action against the counselor in plain language. In the event that more time is needed, the reviewing justice is allowed no more than a ten-day extension from when the written decision was originally due.

Rule 4. Appeal and Reinstatement

(a) A counselor who has been disciplined may pursue an appeal or reinstatement, or both.

(b) The procedures for appealing a disciplinary decision are as follows:

(1) The counselor disciplined may appeal the decision by filing a statement of appeal with the clerk of the Yap State Court within 20 days of receiving the disciplinary decision. The statement of appeal shall identify the points that were improperly considered by the reviewing justice and shall provide reasons under law, evidence, or custom and tradition that support the contention that the decision was wrong. The counselor disciplined may ask for a stay of the disciplinary punishment, but the request must be made in conjunction with the statement of appeal. Upon receiving the statement of appeal, the clerk shall assign the case to a justice other than the justice who issued the disciplinary decision. The clerk shall serve a copy on the Disciplinary Counsel who submitted the report in the case.

(2) Within 10 calendar days of receiving the statement of appeal from the clerk, the Disciplinary Counsel may file a counter statement with the clerk to explain why the disciplinary decision was correct. If a counter statement is filed, the clerk shall serve a copy on the appealing counselor.

(3) The clerk of the Yap State Court shall schedule the appeal for a hearing or a status conference within ten (10) days from when the counter statement is due.

(4) The assigned justice shall give both the counselor appealing the disciplinary decision and the Disciplinary Counsel an opportunity to speak at the hearing.

(5) The standard of review for all appeal is as follows: findings of fact from the written decision are reviewed for clear error, and conclusions of law are reviewed de novo.

(6) Within ten days of the conclusion of the hearing, the justice shall issue an appellate decision explaining why the earlier ethics decision is or is not modified or shall inform the parties that more time is needed to render judgment. In the event that more time is needed, the justice is allowed no more than a ten-day extension from when the appellate decision was originally due.

(c) The procedures for petition for reinstatement are as follows:

(1) A counselor who has been suspended may petition the Yap State Court for reinstatement at the end of his or her suspension. A counselor who has been disbarred may apply for reinstatement after one year from the effective date of disbarment.

(2) The clerk of the Yap State Court shall serve a copy of the petition to the Disciplinary Counsel who submitted the report in the case. The Disciplinary Counsel may file a response to the petition within 10 days but is not required to do so.

(3) A petition for reinstatement shall be set for a hearing, and the clerk shall give notice of the hearing to both the counselor petitioning for reinstatement and the Disciplinary Counsel. At the hearing, the counselor petitioning for reinstatement has the burden of demonstrating that (1) he or she desires in good faith to obtain restoration of his or her privilege to practice law; (2) that he or she has not practiced law in the State of Yap or attempted to do so since he or she was disciplined; (3) that his or her attitude towards the misconduct for which he or she was disciplined was one of genuine remorse; and (4) he or she is qualified to practice law before the Yap State Court and is worthy of the public's trust and confidence.

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**Notes on the Yap State Bar Association Ethics Complaint Procedure Rules**

[1] General Court Order 2012-003 "establish[ed] the procedure by which the State Court of Yap may discipline counselors" under Rule 13(b) of the Rules of the State Bar. The procedures took effect on March 20, 2012. Over a year later, on June 20, 2013, the Yap State Court issued General Court Order 2013-002, which made significant amendments to the original version of the ethics complaint procedure rules to improve the rules' "efficiency and effectiveness." The changes were significant, including, among other things, the addition of a reinstatement procedure and amendments to the commencement of disciplinary proceedings and the procedure for appeals.

[2] The Grievance form is provided in Appendix A.

**APPENDIX A**

# YAP STATE BAR ASSOCATION
# COUNSELOR GRIEVANCE COMPLAINT FORM

Date:_____

**INFORMATION**

Your Name: _____

Address:_____

Telephone:
(Home)_____(Office)_____

(Cell)_____

**COUNSELOR COMPLAINED OF:**

Name:_____

Address: _____

Telephone: _____

**CONTACT WITH OTHER AGENCIES**

Have you contacted any other agency, Attorney General's Office, concerning this matter?

_____
If so, state the name of the agency:

_____

What action was taken by the agency?

_____

**COURT ACTION TAKEN BY YOU AGAINST THE COUNSELOR**

Have you taken any civil or criminal action against the attorney?

_____

**ALLEGATIONS**
Explain your complaint against the counselor in as much detail as possible. If necessary, continue your narrative on a separate sheet of paper.

_____

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**Please Sign Here**

_____

**Date**