

CHAPTER 5

Preliminary Matters

SECTIONS

- § 501. Preliminary hearing—Duties of official.
- § 502. Preliminary hearing—Plea not to be taken.
- § 503. Pre-trial procedure.
- § 504. Disposition of the record.
- § 505. Preliminary examination upon request of person released on bail or personal recognizance.
- § 506. National offense—Detention of accused.
- § 507. National offense—Definition.

§ 501. Preliminary hearing—Duties of official.

When an arrested person is brought before an official authorized to issue a warrant but such official is not competent to try the arrested person for the offense charged, the official shall:

- (1) inform the arrested person of the charge or charges;
- (2) inform the arrested person of his right to retain counsel and of his right to be released on bail as provided by law, and allow him reasonable time and opportunity to consult counsel, if desired;
- (3) inform the arrested person of his right to have a preliminary examination, and of his right to waive the examination and the consequences of such waiver;
- (4) inform the arrested person that he is not required to make a statement and that any statement that he does make may be used against him; and
- (5) fix the amount of bail as provided by law if the arrested person so requests or alter the bail previously set if the official deems best.

Source: TT Code 1966 § 466(a); TT Code 1970, 12 TTC 202; TT Code 1980, 12 TTC 202.

§ 502. Preliminary hearing—Plea not to be taken.

The arrested person shall not be called upon to plead at the preliminary hearing.

Source: TT Code 1966 § 466(b); TT Code 1970, 12 TTC 203; TT Code 1980, 12 TTC 203.

Case annotations:**Pleas**

The trial judge did not actively participate in plea negotiations where he did nothing other than judicially review and comment upon a proposed plea agreement prepared solely by counsel an parties and then voluntarily submitted by counsel to the court. *FSM v. Skilling*, 1 FSM R. 464, 478-79 (Kos. 1984).

A trial judge cannot be said to have negotiated with the parties concerning a proposed plea where he did not in any way suggest that the defendant plead guilty, made no efforts to encourage either party to enter into a plea agreement or to pursue further negotiations, offered no promise to accept any agreement ultimately arrived at, nor was present at any plea agreement negotiations. *FSM v. Skilling*, 1 FSM R. 464, 479 (Kos. 1984).

The plea bargaining process contemplates that plea agreements will be submitted to the trial judge for acceptance or rejection. When counsel place documents before a court either voluntarily or as part of standard court procedures under circumstances where the court is normally expected to comment judicially on the documents, the court's response may not customarily be used as a basis for judicial disqualification. *FSM v. Skilling*, 1 FSM R. 464, 480-81 (Kos. 1984).

Submission of a proposed plea agreement to the court is intended to elicit from the court some indication of an acceptable sanction, assuming that the defendant will admit guilt. The court's statement as to an acceptable penalty does not denote its belief of defendant's guilt. *FSM v. Skilling*, 1 FSM R. 464, 482 (Kos. 1984).

The existence of plea negotiations says little to the court about defendant's actual guilt. *FSM v. Skilling*, 1 FSM R. 464, 483 (Kos. 1984).

A defendant's violation of his plea agreement after the agreement was filed with, and accepted by, the court, but before sentencing by the court, may serve as the basis for court punishment of the defendant. Based upon that violation, the court may accept the defendant's plea of guilty to the crime, although the plea agreement provides for the court to defer acceptance of the plea. *FSM v. Does*, 1 FSM R. 580, 584 (Pon. 1984).

FSM Criminal Rule 11(e)(1)(C) calls for implementation of the terms of a plea agreement by the court if the court accepts the agreement. When the court accepts, the defendant, the prosecution and the court are all bound to carry out the terms of the plea agreement. The defendant is entitled to the benefit of the bargain reflected in the plea agreement and the government is likewise entitled to enforce the defendant's promises. *FSM v. Does*, 1 FSM R. 582, 587 (Pon. 1984).

Considerations of fairness and mutuality, as well as sound policy, require that a defendant who enters into a plea agreement be subject to punishment when he violates the terms of his agreement. *FSM v. Does*, 1 FSM R. 582, 588 (Pon. 1984).

There are sound reasons why prosecutors should retain discretion over whether to submit a plea agreement to a court based upon information obtained by the prosecution subsequent to execution of a written plea agreement but before presentation of that agreement to the court. *FSM v. Ocean Pearl*, 3 FSM R. 87, 91 (Pon. 1987).

A plea agreement calling for dismissal or reduction of charges pending in criminal litigation is contingent upon court approval. Until such approval, neither party is bound by the agreement and neither party can enforce it against the other. *FSM v. Ocean Pearl*, 3 FSM R. 87, 92 (Pon. 1987).

A plea agreement is not fixed until the court has acted upon it in all particulars and has fixed all conditions and explained them to the defendant. *Dores v. FSM*, 3 FSM R. 155, 158 (App. 1987).

The defendant may withdraw from a plea agreement at any time prior to the court's action on every element on the agreement. *Dores v. FSM*, 3 FSM R. 155, 158 (App. 1987).

A duty imposed on the trial court by Rule 11(e)(5) of the FSM Rules of Criminal Procedure to protect the defendant by assuring that there is a factual basis for the plea, may be breached only if the trial court should "enter a judgment" without finding a factual basis. *In re Main*, 4 FSM R. 255, 259 (App. 1990).

§ 503. Pre-trial procedure.

(1) If the arrested person does not waive preliminary examination, the official shall hear the evidence within a reasonable time.

(2) A reasonable continuance shall be granted at the request of the arrested person or the prosecution to permit preparation of evidence. The arrested person has the right to be released on bail as provided by law during the period of a continuance.

(3) The arrested person may cross-examine witnesses against him and may introduce evidence in his own behalf.

(4) If the arrested person waives preliminary examination, or if from the evidence it appears to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall forthwith:

- (a) hold the arrested person to answer in a court competent to try him for the offense charged;
- (b) fix, continue, or alter the bail as provided by law; and
- (c) if bail is not provided, or a personal recognizance accepted, commit him to jail to await trial.

(5) If during the preliminary examination it appears to the official that the warrant of arrest, complaint or other statement of the charge or charges does not properly name or does not properly set forth the nature of the offense for which he was arrested or that although not guilty of the offense specified there is probable cause to believe he has committed some other offense, the official shall not discharge such person but shall forthwith hold him to answer for the offense shown by the evidence.

(6) If the arrested person does not waive preliminary examination and from the evidence it does not appear to the official that there is probable cause to believe that a criminal offense has been committed and that the arrested person committed it, the official shall discharge him.

Source: TT Code 1966 § 466(c); TT Code 1970, 12 TTC 204; TT Code 1980, 12 TTC 204.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

Editor's note: The words, "or does not properly set forth the nature of the offense for which he was arrested" were contained in the 1966 edition of the Trust Territory Code but were deleted from the 1970 and 1980 edition.

§ 504. Disposition of the record.

After concluding the proceedings, the official shall transmit forthwith to the clerk of courts for the district all papers in the proceedings and any bail taken by him; provided, that when a person has been held to answer in a community court, the papers and any bail taken shall be transmitted to the clerk of the community court.

Source: TT Code 1966 § 466(d); TT Code 1970, 12 TTC 205; TT Code 1980, 12 TTC 205.

§ 505. Preliminary examination upon request of person released on bail or personal recognizance.

If it appears it will not be practicable to bring an arrested person promptly before a court as indicated in subsection (2) of section 217 of this chapter, and he has been released on bail or personal recognizance, he may apply to a judge of a district court, if one is available, otherwise to any official authorized to issue a warrant, and request a preliminary examination. Thereupon the judge or official shall set a time and place for preliminary examination, give the complainant and accused reasonable notice thereof, and proceed as outlined in sections 501 through 504 of this title.

Source: TT Code 1966 § 467; TT Code 1970, 12 TTC 206; TT Code 1980, 12 TTC 206.

Editor's note: The 1966 edition of the Trust Territory Code refers, in the final sentence of this section, to section 466 of that edition. Section 466 is codified herein as section 501 through 504 of this title. The 1970 and 1980 editions of the code erroneously referred to "sections 351-354 of this subchapter."

§ 506. National offense—Detention of accused.

For any offense against the National Government of the Federated States of Micronesia, or for the commission of any major crime, a Justice of the Supreme Court or any judicial officer of any State where the accused may be found

may cause the accused to be arrested and confined or released for trial before the Supreme Court.

Source: PL 2-22 § 1.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 507. National offense—Definition.

"Judicial officer of any State" means a judge of a district court of the Trust Territory, a judge or justice of any court of record established pursuant to the charter of any district within the Federated States of Micronesia, or a judge or justice of any court of record of a State of the Federated States of Micronesia; or the clerk of court of any State only for the purpose of setting bail from a bail system established by the Supreme Court.

Source: PL 2-22 § 2.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.