APPELLATE REVIEW

An appeal at the early stage of development of FSM judicial systems is a significant event calling for relatively large expenditure of judiciary resources. In order to preserve and uphold the legitimate right of parties to appropriate appeals, the FSM Supreme Court must be vigilant and exercise its inherent powers to avoid unnecessary expenditure of resources for premature or unauthorized appeals. FSM v. Yal=Mad, 1 FSM R. 196, 197-98 (App. 1982).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. Jonas v. Trial Division, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless the FSM Supreme Court decision affects the Secretary of the Interior=s ability to fulfill his responsibilities under Executive Order 11021. Jonas v. Trial Division, 1 FSM R. 322, 329 n.1 (App. 1983).

A trial court may in its discretion permit a case involving separate charges based upon the same act to proceed to trial. The court, however, should render a decision and enter a conviction only on the more major of the crimes proven beyond a reasonable doubt. After appeal, if any, has been completed, and the greater charge is reversed on appeal, the trial court may then find it necessary to enter a judgment on the lesser charge. Laion v. FSM, 1 FSM R. 503, 529 (App. 1984).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

The interest protected by having exact time limits is in preserving finality of judgments. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an issue is one of first impression and of fundamental importance to the new nation, the court should not lightly impose sanctions upon an official who pushes such an issue to a final court decision, and should make some allowance for wishful optimism in an appeal. Innocenti v. Wainit, 2 FSM R. 173, 188 (App. 1986).

Only attorneys admitted to practice before the FSM Supreme Court or trial counselors supervised by an attorney admitted to practice may appear before the FSM Supreme Court on appeals from state court cases. Kephas v. Kosrae, 3 FSM R. 248, 252 (App. 1987).

FSM Appellate Rule 26(b) gives the appellate court broad discretion to enlarge time upon a showing of good cause. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

Where an appellate court has held that a trial judge is under a clear and non-discretionary duty to step aside from presiding over a case and the petitioner has a constitutional right to obtain compliance with that duty, all documents issued after the date of the appellate decision are null and void and shall be expunged from the record and the judge shall be enjoined from taking any further action as a judge in the case. Etscheit v. Santos, 5 FSM R. 111, 113 (App. 1991).

When the language of an FSM appellate rule is nearly identical to a United States= counterpart, FSM courts will look to the United States federal courts for guidance in interpreting the rule. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Conducting trials de novo and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of

Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Where the appellant at oral argument contended that a grant of an interest in land was for an indefinite term and the court inquired of the appellant whether the grant was perpetual or forever the issue of whether a perpetual grant was for an indefinite term was fairly before the appellate court and could be decided by it even though the issue had not been briefed nor had the appellee urged it. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

An appellate court cannot hold a party in contempt for violating a trial court=s orders because his actions were not a violation of the appellate court=s orders or done in the appellate court=s presence. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Failure to locate counsel to prosecute appeal or to attempt to proceed pro se may, after notice, be deemed a voluntary dismissal of an appeal. Palsis v. Talley, 7 FSM R. 380, 381 (App. 1996).

After a judgment has been appealed a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

When an appeal is taken from the trial court it is divested of authority to take any action except actions in aid of the appeal. This is a judge-made rule to avoid the confusion and inefficiency of putting the same issue before two courts at the same time. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

When the attorney of record at the time of appeal obtains a later trial court order substituting another attorney who cannot address all the issues on appeal, the appellate court will direct the first attorney to proceed with the appeal. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

An appellate court may affirm the decision of the trial court on different grounds. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

Where counsel have waived the issue of reliance damages and only argued specific performance at trial and on appeal the appellate court will leave the matter where counsel have placed it. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 623 (App. 1996).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a trial court may retain jurisdiction over the issue of attorneys= fees even though an appeal is pending on the merits of the case. Damarlane v. United States, 8 FSM R. 14, 16 (App. 1997).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

An appeal is still pending on the day before the appellate opinion is filed even though the justices= signatures are dated earlier. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26 (App. 1997).

A civil case decided by the Chuuk State Supreme Court Appellate Division may be appealed to the FSM Supreme Court Appellate Division by writ of certiorari. Wainit v. Weno, 8 FSM R. 28, 29 (App. 1997).

Chuuk State Supreme Court appellate rules may be amended by statute. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court=s jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

Although in the absence of an order directing final judgment any order or decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties, a trial court does not have the authority to vacate or amend the order from which an appeal is taken. Stinnett v. Weno, 8 FSM R. 142, 145 (Chk. 1997).

When there is an Appellate Rule 4(a)(1)(B) appeal from the grant of an injunction the trial court loses its power to vacate the order when the notices of appeal are filed. However, as with Rule 59(e) and 60(b) motions, the trial court may consider and deny the motion, or, if it were inclined to grant the motion, so indicate on the record so as to allow the movant an opportunity to request a remand from the appellate division so that it could proceed to grant the motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.2 (Chk. 1997).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a similar United States counterpart, we may look to U.S. practice for guidance. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants= petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM R. 160, 162 (App.

1999).

Sections 37 and 38(1) of the 1990 Chuuk State Judiciary Act preserve, just as the Chuuk Constitution does, the distinction between an "order" and a "decision." Specifically, a "decision" will be made by the entire appellate panel assigned to the case. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

Although 4 F.S.M.C. 121 mandates the publication of FSM Supreme Court appellate opinions, confidentiality in the spirit of the rules can been maintained in a continuing attorney disciplinary matter by the omission of names and identifying characteristics. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 175 (App. 1999).

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

When an FSM appellate rule has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.1 (App. 2000).

The FSM Supreme Court trial division has no appellate or supervisory jurisdiction over either division of the Pohnpei Supreme Court, and no appeal lies from the Pohnpei Supreme Court to the FSM Supreme Court trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

When the issue in both appeals is identical, the cases may be consolidated for purposes of rendering an opinion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 136 (App. 2001).

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of hearing the appeal. Cholymay v. Chuuk State Election Comm=n, 10 FSM R. 145, 150 (Chk. S. Ct. App. 2001).

When a Chuuk Appellate Rule is similar to a U.S. Federal Rule of Appellate Procedure and the Chuuk State Supreme Court has not previously construed its rule, it may look to other FSM sources and then to U.S. sources for guidance. Wainit v. Weno, 10 FSM R. 601, 606 n.1 (Chk. S. Ct. App. 2002).

The presence or lack of subject matter jurisdiction can be raised at any time by any party or by the court. Once raised, it must be considered. This is because a decision by a court without subject matter jurisdiction is void, and such occurrences should be avoided. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

When an appellate rule has not been construed by the FSM Supreme Court and it is nearly identical to a United States counterpart, the FSM Supreme Court may look to U.S. practice for guidance. Bualuay v. Rano, 11 FSM R. 139, 146 n.1 (App. 2002).

The court=s review of a single justice=s action is discretionary, and when the appeal is fully briefed and is ready to be heard on its merits and when the full court finds that its order directing distribution of a portion of the cash supersedeas bond is sufficient to protect the appellees, the court will not revisit every single justice order. Panuelo v. Amayo, 11 FSM R. 205, 209 (App. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding

of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S. Ct. App. 2002).

When an appellate court remands a case to the trial court on the ground that the lower court=s findings are inadequate the reviewing court may require or recommend that the trial court take additional evidence. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 626 n.2 (App. 2003).

No appellee is forced to do anything in any appeal. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellant must timely file a request for a transcript, or a statement of the issues, a designation of the appendix, and an opening brief, with an appendix. An appellant=s failure to comply with these rules may subject its appeal to dismissal. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellate court will first consider an appellant=s due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the court may choose to look to United States court decisions for guidance in interpreting the rule, but is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 439 (App. 2004).

When the language of an FSM appellate rule is nearly identical to its counterpart United States rule, the court may choose to look to United States court decisions for guidance in interpreting the rule, but it is not required to do so. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

Under the doctrine of *stare decisis,* once a point of law has been established by a court, that point of law will be followed by all courts of lower rank in subsequent cases where the same legal issue is raised. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

The court should not have to instruct attorneys that the court rules mean what they say. An attorney practicing before the court is expected to know the rules and abide by them. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

While it is true in construction of rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

The court must first look to FSM sources of law, but when the court has not previously construed an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 n.1 (App. 2006).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts= cases, when an FSM court has not previously construed an FSM appellate rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. FSM v. Wainit, 14 FSM R. 164, 168 n.1 (Chk. 2006).

Aggrieved parties have the right to appeal single-justice appellate orders to a full panel. This applies strictly to parties, not to justices. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

A specific provision in the rules will control rather than a general rule to the extent that they conflict. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

If two rules conflict, the more recent expression of the sovereign=s will (that is, the most recently enacted statute or rule) prevails over the earlier to the extent of the conflict. FSM v. Petewon, 14 FSM R. 463, 468 n.1 (Chk. 2006).

The civil procedure rules generally do not apply in the appellate division. Samuel v. Chuuk State Election Comm=n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The appellate rules provide that in the interest of expediting decisions, or for other good cause shown, the court may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of the appellate rules in a particular case on a party=s application or on its own motion and may order proceedings in accordance with its discretion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

Civil Rule 65 and the Civil Procedure Rules in general apply to civil proceedings in the trial division, not to appellate division proceedings. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Generally, only attorneys admitted to the FSM Supreme Court can file papers in the appellate division. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 6 (App. 2007).

In a case that has been reversed and remanded a new trial may not be necessary when a complete trial transcript was prepared for the appeal, but if the trial court deems it necessary, it may take further evidence. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

In instances where there is no FSM precedent, the appellate court may consider cases from other jurisdictions in the common law tradition. Walter v. FSM, 15 FSM R. 130, 131 (App. 2007).

Although the court must first look to FSM sources of law and circumstances to establish legal requirements in criminal cases rather than begin with a review of other courts= cases, when an FSM court has not previously construed an FSM rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 n.3 (App. 2007).

By statute, appeals from determinations of ownership by the Land Commission are treated and effected in the same manner as an appeal from the Chuuk State Supreme Court in a civil action. Thus, the Chuuk Rules of Appellate Procedure are the rules to be followed in appeals from Land Commission determinations. Liwis v. Rudolph, 15 FSM R. 245, 248 (Chk. S. Ct. Tr. 2007).

Once a notice of appeal is filed the appellants= options in pursuing their appeal, are: 1) they can order from the court clerk a transcript of such parts of the proceedings not in the file, as they deemed necessary; 2) if they intend to urge on appeal that a Land Commission finding or conclusion was unsupported by the evidence or was contrary to the evidence, they can include in the record a transcript of all evidence; and 3) if the appellants decide not to include the whole transcript on appeal, they should, within 10 days of the filing of the notice of appeal, file a statement of the issues they intend to present on appeal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

Although it is appropriate for the FSM Supreme Court to consider United States courts= decisions as guidance in interpreting a similar appellate rule, when that U.S. rule was extensively rewritten in 1998, it is appropriate to consider only those U.S. court decisions that interpret the rule before its 1998 rewriting. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364-65 (App. 2007).

An argument raised for the first time at appellate oral argument is improperly raised. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

An appeal from bail orders brought pursuant to FSM Appellate Rule 9(a) may be heard by a single justice of the appellate division. Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When the court has not had occasion to consider the standard of review for an appeal of an order denying bail pending trial under FSM Appellate Rule 9(a), the court may consider authorities from other jurisdictions in the common law tradition since FSM Appellate Rule 9(a) is similar to U.S. Appellate Rule 9(a). Nedlic v. Kosrae, 15 FSM R. 435, 437 (App. 2007).

When it is demonstrably the case that bail was set for each of the appellants in the amount of $1,000, the issue on appeal is not whether they are entitled to bail, but rather the issue is whether the bail amount is excessive. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

When the date for a party to do an act is within a prescribed period after service of a paper upon that party, Appellate Rule 26(c) permits six days to be added, but the Rule 26(c) enlargement only applies when the prescribed time period is triggered by and calculated from the service of a paper upon the party who may then act. The fact that notice is to be served by mail is not dispositive. The correct inquiry is whether the required actions must be performed within a prescribed period of filing or of service. If the act is to be taken after filing, the time for action begins to run from that date. If the act is to be taken after service, the Appellate Rule 26(c) extension applies. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 n.1 (App. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

In the absence of an order issued by the court upon a showing of special cause, the clerk of court may not accept papers for filing by facsimile, but the court may authorize the clerk of court to accept for filing a facsimile response when the appellant desires to submit a timely response for filing. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

Filing by facsimile might be accepted if the provisions of General Court Order 1990-1, ' 2 are observed. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

When an FSM Appellate Procedure Rule is identical or similar to a U.S. counterpart and the court has not previously construed some aspect of the rule, it may look to U.S. sources for guidance. Kosrae v. Langu, 16 FSM R. 83, 87 n.1 (App. 2008).

Imposition of Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 (App. 2008).

When an FSM court has not previously construed an FSM appellate procedure rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 107 n.4 (App. 2008).

It is the FSM Supreme Court appellate division that, under Rule 46(c), imposes "any appropriate disciplinary action" against one certified to practice before the court. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A norm of the interpretation of rules is that the specific provision prevails over the general provision. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c) (for transgressions committed in the appellate division). A single appellate justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the appeal, or, in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that single justice may give notice of a possible Rule 46(c) sanction, but only an appellate panel may decide whether to impose it. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual disciplinary process in the Disciplinary Rules. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 & n.8 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Appellate Rule 46(c) discipline. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 110 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 123 (App. 2008).

When an FSM court has not previously construed an FSM Appellate Procedure Rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 123 n.4 (App. 2008).

In the interpretation of rules, the specific provision prevails over the general provision. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 125 (App. 2008).

Only an appellate panel has the power to impose attorney disciplinary sanctions through the application of Appellate Rule 46(c). A single justice cannot impose Rule 46(c) disciplinary sanctions. The proper procedure is for the appellate division to give notice of possible sanction after disposing of the

appeal, or in a criminal appeal, after the offending attorney has been discharged. The same panel would then rule on, and impose, if necessary, the appropriate sanction. If the appeal is disposed of by a single justice dismissal order, that justice may give notice of possible Rule 46(c) discipline, but only a full appellate panel may decide whether to impose it. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 (App. 2008).

Besides Appellate Rule 46(c), disciplinary sanctions may also be imposed on an attorney through a complaint referred to the Chief Justice and docketed by the Chief Clerk, which then proceeds through the usual process in the Disciplinary Rules. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 & n.9 (App. 2008).

A single justice reprimand must be reversed since a single justice lacks the power to impose Rule 46(c) discipline. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126 (App. 2008).

An appellate court should not have to instruct counsel on the rules= requirements. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

It is proper for temporary justices, otherwise meeting the requirements of Chuuk Constitution Article VII, section 5(b), to constitute the full appellate panel and to preside over Chuuk State Supreme Court appeals if Chuuk State Supreme Court justices are disqualified or not readily available. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When the appellate court has not previously considered whether Appellate Rule 4(a) or 4(b) applies to a criminal contempt finding in a civil case and those FSM appellate procedure rules are identical or similar to U.S. counterparts, the court may consult U.S. sources for guidance in interpreting those rules. Berman v. Pohnpei Legislature, 17 FSM R. 339, 353 n.6 (App. 2011).

Rules are construed in a manner similar to the manner in which statutes are construed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

If the appellees wish the appellants to provide a bond necessary to ensure payment of costs on appeal, they must first apply to the court appealed from. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The Kosrae Rules of Appellate Procedure govern procedure in the Kosrae State Court trial division when considering an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.1 (App. 2013).

FSM Appellate Rules 3 and 4 govern how and when appeals are taken by the FSM Supreme Court appellate division. Ruben v. Chuuk, 18 FSM R. 604, 606 (App. 2013).

The court must first look to FSM sources of law, but when the court has not previously construed an aspect of an FSM appellate rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting and applying the rule. Ruben v. Chuuk, 18 FSM R. 637, 639 n.3 (Chk. 2013).

When, at the close of the petitioner=s case-in-chief, the respondents move to dismiss the petitioner=s case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

While the appellate court must first look to FSM sources of law rather than start with a review of other courts= cases, when it has not already construed an FSM appellate rule which is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Berman v. FSM Nat=l Police, 19 FSM R. 118, 123-24 n.1 (App. 2013).

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

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

Since the Kosrae Constitution provides that appeals from the State Court trial division may be made to the State Court appellate division, as shall be prescribed by law, enabling legislation is required to implement appeals from the trial division to the State Court appellate division, and when no such legislation has become law, no constitutional or statutory authority exists to authorize appeals from the Kosrae State Court trial division to the non-existent Kosrae State Court appellate division. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

By statute, the Kosrae State Court can, if appropriate, order a rehearing in the Land Court for only a part of a case. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

The court must first look to FSM sources of law and circumstances, but when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Nena v. Saimon, 19 FSM R. 393, 395 n.1 (App. 2014).

The appellate panel=s presiding justice may consider a bill of costs. A single justice=s action may be reviewed by the court. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Although it must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 396, 398 n.1 (App. 2014).

The appellate panel=s presiding justice may consider an opposed bill of costs, but the single justice=s action may be reviewed by the court. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although the court must first look to FSM sources of law and circumstances, when it has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 n.1 (App. 2014).

An appellate panel=s presiding justice may consider an opposed bill of costs, but the single justice=s action may be reviewed by the court. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452-53 (App. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the

new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

The absence of express authority in FSM appellate case law to consolidate similar, but not identical, appeals does not mean the court lacks the ability to do so when appropriate circumstances present themselves so long as it does not conflict with any rule or law. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389-90 (App. 2016).

Since appeals may be consolidated by order of the Supreme Court appellate division on its own motion or on a party=s motion, or by stipulation of the parties to the several appeals, it is clear that the court exercises broad discretion in determining whether or not to consolidate cases. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

When common questions of fact pervade the trial case from which the three appeals all arose and when each appellate case shares at least one common issue, if not more, with at least one of the other cases, consolidation of the appeals is appropriate because addressing the several legal issues arising from the same facts and procedural history with commonality of parties in a single consolidated proceeding conserves judicial resources, reduces cost and delay, and expedites the disposition of the issues without sacrifice of justice and because consolidating the matters would further the interest of justice and ultimately promote judicial economy since the issues of law to be decided are closely interrelated in all three cases and since hearing the matter as three separate appeals would result in unnecessary duplicative efforts by the parties and the court. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 390 (App. 2016).

An appellate court does not sit to render decisions on abstract legal propositions or issue advisory opinions. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 513 (App. 2016).

When it is an issue of first impression in interpreting an FSM Appellate Rule and the Rule=s language is nearly identical to its United States= counterpart, it is appropriate for the court to look to the United States federal courts for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224, 229 n.5 (App. 2017).

Arguments that a later appellate panel must either consist of the exact three justices who sat on the prior appeal or, alternatively, of three justices who were not involved in the previous appeal, are devoid of merit. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

The computation of time in the Pohnpei Supreme Court appellate division is governed by Pohnpei Civil Procedure Rule 6, and under that rule, when a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays are excluded in the computation. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment=s validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

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

– Briefs, Record, and Oral Argument

The appellant=s tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

In absence of express appellate division permission to appear without supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed will be rejected. Alaphonso v. FSM, 1 FSM R. 209, 230 n.13 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant=s brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Where the delay was only ten days, no prejudice to the appellant has been suggested, the appellant has not opposed the motion for extension of time and the court finds a substantial public interest in having the position of the government considered in the criminal appeal, the court may appropriately enlarge the time and permit late filing of the government=s brief. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The date of notice from the clerk that the record is ready, not the filing of the Certification of Record, triggers the running of the due date of an appellant=s brief. Federated Shipping Co. v. Ponape Transfer & Storage, 5 FSM R. 89, 91 (App. 1991).

It is within the court=s discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party=s efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

Prejudice to an appellee may be shown by failure of an appellant to file a notice of issues presented and contents of the appendix as required under FSM Appellate Rule 30(b). Nakamura v. Bank of Guam (I), 6 FSM R. 224, 227 (App. 1993).

The service on opposing counsel of a signed and dated copy of a brief filed with the appellate division, although not explicitly stated in FSM Appellate Rule 31(d), is a procedural requirement of the FSM Supreme Court. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

The requirement under FSM Appellate Rule 30(a) of an appendix is only waived at the court=s discretion and by court order. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Parties to an appeal must reference properly and clearly in their briefs the parts of the record containing material in support of their arguments, and unless the court has waived an appendix under Appellate Rule 30(f), references should be to the appropriate pages of the appendix. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

Facts asserted to excuse the filing of an appellate brief within the time prescribed must be proved. Nakamura v. Bank of Guam (I), 6 FSM R. 224, 228 (App. 1993).

FSM Appellate Rule 28(a) requires, among other things, that arguments in an appellant=s brief be supported by citations to authority; failure to provide such support will be deemed a waiver by appellant of the claims being argued. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 283 (App. 1993).

A motion to correct the record on appeal must first be made in the trial court before application to the appellate court. Berman v. Santos, 7 FSM R. 492, 493 (App. 1996).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by, or contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to that finding or conclusion. If the appellee then deems a transcript of other parts of the proceedings necessary, he must counter designate the additional parts the appellant should include in the record. If the appellant does not request such parts, the appellee may request the additional parts himself or move for a court order requiring the appellant to do so. Damarlane v. United States, 7 FSM R. 510, 512 (App. 1996).

An appellant must include in the appendix to its opening brief all relevant and essential portions of the record, including any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the court(s) below, but oral rulings are not required in the appendix if already contained in transcripts filed as a part of the record. The record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court. Damarlane v. United States, 7 FSM R. 510, 512-13 (App. 1996).

Appellants are responsible for presenting to the court a record sufficient to permit it to decide the issues raised on appeal, and one which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant has the primary responsibility for including in the record all necessary parts of the transcript, and the appellant cannot shift his responsibility to the appellee by the simple device of failing to discharge it himself. It is the appellant who must insure an adequate record, and if the record fails to demonstrate error, the appellant cannot prevail. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

An appellant=s failure to include in the record relevant transcripts may be fatal to his appeal because when the appellants do not include evidence in the record, the presumption is that the evidence was sufficient to sustain the trial court=s judgment. Damarlane v. United States, 7 FSM R. 510, 513 (App. 1996).

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

Any appellant would be hard pressed to prove a finding of fact at trial was clearly erroneous without a transcript of the trial proceedings. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

A transcript of at least part of the trial court proceedings is generally necessary if the appeal involves issues of fact or evidence. Damarlane v. United States, 8 FSM R. 45, 53 n.6 (App. 1997).

When an appellant has failed to comply with the appellate rules= timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

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. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When a transcript of the evidence in the Chuukese language has been on file for three years and the appellant has had access to the transcript for the purpose of prosecuting his appeal during the entire time and when nothing in the record indicates that the appellant requested an English language transcript a motion to enlarge time to file brief and to postpone oral argument on the ground that an English language transcript has not been received will be denied. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant=s failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant=s brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants= counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

Appellees= counsel=s motion to continue oral argument because the appellees are unable to pay for a copy of the transcript may be denied when he made the same motion on the same ground during the previous appellate session one year earlier and the other parties oppose any further continuance. Sellem v. Maras, 9 FSM R. 36, 37-38 (Chk. S. Ct. App. 1999).

An appellant must include a transcript of all evidence relevant to the trial court=s decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

Rule 28(I) permits appellants to join in a single brief. Implicit in this rule is an appellant=s right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

An appellant has a right to file its brief individually, and does not waive this right by joining the other appellants in earlier appeal procedures. Prejudice to an appellee from the resulting two briefs can be eliminated by seeking any necessary enlargement of time to file its responding briefs. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

It is the appellant=s duty to prepare and file the appendix. But when the appellant has failed to prepare and file the appendix and the appellee instead does so, and the appellee prevails, the cost of producing copies of the appendix may be taxed in the appellee=s favor. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 n.2 (App. 2000).

The appellate division has broad discretion to grant an extension of time to file a brief and appendix upon a showing of good cause. O=Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. O=Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

While it is true that in an attorney sanction appeal many items usually placed in an appendix are not relevant to the appeal, many are, such as the docket sheet or trial court=s certified list, the notice of appeal, and the final order appealed from; and those items, and any other documents in the record to which the appellant wishes to draw particular attention, should be included in the appendix, but irrelevant items may be omitted. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An appellee who fails to file a brief will not be heard at oral argument except by the court=s permission. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

Although certain consequences flow from the failure to file a brief, appellees= attorneys are not otherwise under an obligation to the court to file briefs, but may be under a professional ethical obligation to their clients to do so, or may be subject to malpractice liability if an appellee is in the end prejudiced by his attorney=s failure to file. In re Sanction of Woodruff, 9 FSM R. 414, 415 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk=s notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal=s dismissal. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

It is within the court=s discretion to dismiss an appeal for late filing of an appellant=s brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appellant shall, not later than 10 days after the date of the appellate clerk=s notice that the record is ready, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for

review, both of which the appellant must file within 10 days after the date of the clerk=s record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

When an appellant=s 1996 brief was not filed with the court, but only lodged with the clerk and the appellant filed one in 1999, the appellant has filed only one brief in the appeal because papers merely "lodged" with the clerk, but not filed, are not part of the record, although the existence of the 1996 "lodged" brief is part of the record. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

If an appellee deems a transcript is needed when the appellant has declined to order one, the appellee may designate what transcript is needed and if the appellant does not order it, then the appellee may order it or seek an order requiring it. Wainit v. Weno, 10 FSM R. 601, 607 n.2 (Chk. S. Ct. App. 2002).

No transcript is needed when no facts are in dispute and the chronology of events is clear. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

When a justice=s reason for denying an appellant=s motions was clearly stated in his order, speculation about other possible reasons is pointless. Parties are entitled to rely on the justice=s written order. Wainit v. Weno, 10 FSM R. 601, 607 (Chk. S. Ct. App. 2002).

While the court will not look favorably on anyone who attempts to manipulate type face in an attempt to circumvent the rules= intent, which is to place a reasonable limitation on submissions to the appellate division and prevent the court from wasting time and resources, the court may decide not to strike a brief when there was no evidence the appellees= intentionally disregarded Appellate Rule 32(a) or that the appellant was prejudiced, but which, because of technological changes from typewriters to computers, technically exceeded the Rule=s page limit. Panuelo v. Amayo, 11 FSM R. 205, 208-09 (App. 2002).

Good cause to enlarge time to file a reply brief may be found when the appellant=s motion to strike the appellees= brief has not been resolved. Panuelo v. Amayo, 11 FSM R. 205, 209 (App. 2002).

A state does not need either the parties= written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

An appellee may supplement the designation of the appendix, but if it does not, the appendix stands as designated by the appellant; and an appellee is also directed to file its brief within thirty days of service of the appellant=s brief, but the sole consequence of not doing so is that the appellee will not be heard at oral argument except by permission of the court. The court, however, prefers full participation by appellees as the court, FSM jurisprudence, and the FSM bar usually benefit from a full presentation of all the relevant issues by all the interested parties. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 627 & n.3 (App. 2003).

Appellate briefs are deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. This is an appropriate procedure to follow in an analogous circumstance in the trial division when it is considering an appeal. Church of the Latter Day Saints v. Esiron, 12 FSM R. 473, 475 (Chk. 2004).

The court reviewing a Land Court decision must have before it the full and complete record upon which the Land Court's final decision was based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627

(Kos. S. Ct. Tr. 2004).

Since the amount of the attorney=s fees owing to plaintiffs remained before the trial division at the time the appellate record ready certificate was issued, this does not mean that the record ready certificate=s issuance was improper since an order awarding a specific amount of attorney=s fees is a separate order that is not yet part of the appeal. Felix v. Adams, 13 FSM R. 28, 29 (App. 2004).

Regardless of whether a party who filed a notice of appeal is designated an appellant or cross-appellant, each appellant must discharge the duties imposed by Appellate Rule 10(b) and take any other action necessary to enable the clerk to assemble and transmit the record. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 n.1 (Pon. 2004).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely affect the appellant=s power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant=s burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Rule 30 requires an appellant to file an appendix with its brief which must contain relevant and essential portions of the record and specifies the exact documents that should be part of an appellant=s appendix, including the trial court docket sheet, the notice of appeal, relevant portions of pleadings filed below, the judgment sought to be reviewed, and any portions of the transcript of proceedings below to be relied upon. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

Although Rule 30(f) provides for the possibility of hearing appeals without an appendix, that is by special order of the court only since an appendix is an essential element of an appellant=s brief and the requirement that it be included is not waiveable by appellant and only in limited circumstances at the court=s discretion and by court order may it be waived. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

An appellant=s failure to satisfy Rule 30=s requirements can result in the of the appeal=s dismissal. Chuuk v. Davis, 13 FSM R. 178, 182 (App. 2005).

The parties are required to cite in their briefs to the record as included in the appendix or the record as a whole. The court take such citations to the record seriously. Clear identification of parts of the record containing matter that forms the basis for appellant=s argument is the brief writer=s responsibility, as the court is not required to search the record for error. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant neither filed an appendix nor made a single citation to the record in its brief and submitted nothing to the appellate court which even documented the trial court decision under review, such egregious omissions are evidence of negligence. These violations of procedural rules present problems with both the form and substance of appellate review when the appellant=s assertions in its brief are utterly unsupported by proof of what the trial court did or did not do below. The appellate court should not be put in the position of having to take an appellant at its word. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant fails to provide a necessary appendix and that appendix is provided by an appellee and the appellee prevails, the cost of producing the appendix may be taxed in the appellee=s favor. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When an appellant has provided certain portions of the trial transcript in its brief and as part of its appendix, but does not direct the court to the relevant portions of the transcript that show that the trial

court=s findings were clearly erroneous, it is not the court=s responsibility to search the record for error. The parties= briefs must clearly identify those portions of the record which support their arguments. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When an appellant asserts that there was no evidence to support certain findings, but has not provided a full transcript, the court cannot make the determination that there was no evidence before the court to support these findings. A transcript setting forth all of the evidence relevant to the trial court=s decision must be provided by the appellant if he is arguing on appeal that the trial court=s findings lack evidentiary support. Otherwise the appellate court will be unable to identify any of the trial court=s findings of fact as clearly erroneous. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

When a full trial transcript is included in appellant=s appendix, there is no reason why the cross-appellant should be required to also file an identical trial transcript. One complete trial transcript in the appellate file is sufficient. Two would be a waste of resources. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

The court may hear argument from the appellee if the appellant fails to appear at the time set for hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

Although Kosrae Appellate Rule 14(c) provides that if an appellant fails to file his brief within the time provided by the rule, or within time as extended by court order, an appellee may move for dismissal of the appeal and also that the court, on its own motion, may issue an order to show cause why the appeal should not be dismissed for appellant=s failure to file a brief, under Kos. S.C. ' 11.614(5), governing Land Court appeals, the State Court may refuse to allow oral argument by a party who fails to file a timely brief. Since the statute differs from the appellate rules and the statute specifically applies to appeals from Land Court, it governs over the general appellate rules and the court may exercise its discretion to allow oral argument by appellants from a Land Court decision who have not filed a brief. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 523 (Kos. S. Ct. Tr. 2007).

Any appellee may move to strike any document in the appellant=s appendix on the ground that that document was not certified as part of the record on appeal. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

If a cross appeal is filed, the brief of the appellee must contain the issues and argument involved in the appellee=s appeal as well as the answer to the appellant=s brief and the appellant must prepare and file an appendix that contains the essential and relevant portions of the record. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

The court may shorten or enlarge the periods prescribed for the serving and filing of briefs and may also enlarge the time period for doing any act that is required or allowed under the rules. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

Within 30 days after service of the principal brief by the appellants/cross-appellees, the appellees/cross appellants must file their principal and response brief. That brief must comply with Appellate Rules 28(a) and (b), except that the brief need not include a statement of the case or a statement of the facts unless they are dissatisfied with the statement in the appellants= principal brief. In addition, their brief may not exceed a total of 100 pages in length, nor may the respective portions of the brief comprising the principal brief and response brief each exceed 50 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10-11 (App. 2007).

The appellants/cross-appellees must, within 30 days after service of the appellees/cross-appellants= principal and response brief, file their brief that responds to the principal brief in the cross appeal. Their brief must comply with Appellate Rule 28(b), except that it need not include a statement of the case or a

statement of the facts unless it is dissatisfied with the appellees/cross-appellants= statement. In filing the brief, the appellants/cross-appellees may, in the same brief, reply to the appellees/cross-appellants= response brief. If a reply is made, the combined brief must also comply with Appellate Rule 28(c), and if a combined brief is filed, the brief may not exceed a total of 75 pages in length, with a further restriction being that the portion of the brief comprising the response brief must not exceed 50 pages in length while that portion of the brief comprising the reply cannot exceed 25 pages in length. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

The appellees/cross-appellants may, within 14 days after service of the appellants/cross-appellees= response brief, file a reply. This reply brief must comply with Appellate Rule 28(c) and must be limited to the issues presented by the cross appeal. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

Parties who have been designated as the appellants in an appeal and cross-appeal for the purpose of complying with Appellate Rules 28, 30 and 31, must undertake the duty of preparing the appendix to the appellant=s brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 11 (App. 2007).

When, because the appellees were allowed to file an untimely brief, the court exercised its statutory discretion and ordered that they would not be allowed to present oral argument, and when the appellants= counsel requested a continuance and claimed that the appellees= counsel agreed to the continuance, but appellees= counsel opposed the continuance and appeared at the time set for argument stating he had not agreed and that the appellants had not shown sufficient grounds for a continuance and then requested that appellants= counsel not be allowed to present oral argument, the court ordered that the case would be decided on the briefs and record and that neither party would be allowed to present oral argument. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 143-44 (Kos. S. Ct. Tr. 2007).

The court may permit the respondents to present oral argument even though they had not answered the petition in the time previously set by the court and had thus waived their right to respond at oral argument without the court=s permission. Murilo Election Comm=r v. Marcus, 15 FSM R. 220, 223 (Chk. S. Ct. App. 2007).

Costs for printing and copying the brief, appendix, and reply brief are expenses that traditionally have been included within costs that are awarded to prevailing parties. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 82 by 11 inches and type matter not exceeding 62 by 92 inches, with double spacing between each line of text and the cover of the appellant=s brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and that of any reply brief gray, and except by court permission, the parties= principal briefs must not exceed 50 pages, and the reply briefs not exceed 25 pages, when the appellant=s briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant=s brief before it submitted its own brief, the appellee=s request to strike the appellant=s brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The court will not look favorably upon anyone who attempts to manipulate type face in an effort to circumvent the intent of the Appellate Procedure Rules, which is to place a reasonable limitation on submissions to the court which, in turn, prevent the court from wasting time and resources. In such cases, the court may decide not to strike a brief when there is no evidence of any intentional disregard for the rules, and when the other party has not been prejudiced. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

The amicus curiae=s role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

A party whose position is being opposed by an amicus curiae brief may file a responsive brief. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae=s motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

There are four factors to consider when the government files an untimely motion for enlargement of time to respond to appellant=s brief in a criminal appeal: 1) the length of the delay in seeking an enlargement; 2) whether the appellant will be prejudiced; 3) whether the appellant objects to the motion; and 4) whether there is substantial public interest in allowing the government to submit its argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

When the FSM=s request for an enlargement of time to file its response brief was over seven months late and the appellants opposed the enlargement; when allowing the FSM to file a brief would necessitate the postponement of the scheduled oral argument, severely prejudicing the appellants due to restrictions placed on their civil liberties as a result of the underlying convictions; when allowing the FSM to participate in oral argument (with or without filing a brief) would severely prejudice the appellants since it would deny them both adequate notice of the FSM=s arguments and adequate time to prepare for responding to those arguments; when there is the public interest in allowing the government to participate in the appeal of a criminal matter and at least an equal public interest in requiring the government to diligently, competently and promptly prosecute its cases; when the FSM Department of Justice=s unpersuasive excuses point to internal strife within their own ranks; when the public most certainly has an interest in holding the government to a standard that demands resolution of such strife and efficient administration of its duties, good cause does not exist to enlarge time for the FSM to file a brief and to be heard at oral argument. Engichy v. FSM, 15 FSM R. 432, 434 (App. 2007).

The court may grant co-appellants= motions to consider their two briefs as supplemental to each other. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

When an appellant has filed his brief properly he need not ask to incorporate his brief as his oral argument due to his absence from oral argument because all properly filed appellate briefs are considered regardless of participation in oral argument. Engichy v. FSM, 15 FSM R. 546, 551 (App. 2008).

Although it was stamped as "received" by the clerk, the court will deem filed a brief signed by unadmitted trial counselor and signed by an admitted supervising attorney since the brief was signed by an admitted attorney. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 n.1 (App. 2008).

Two appeals may both set for oral argument at the same time when the issues were identical, the facts were virtually identical, the trial court decisions appealed from were virtually identical, and the trial court transcript was completely identical since the trial court (and counsel) dealt with both cases simultaneously. For these same reasons, both appeals may be considered and addressed in one opinion. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

Under Appellate Rule 31(c) an appellee who fails to file a brief will not be heard at oral argument except by the court=s permission. The court may permit an appellee to be heard when it cannot find any prejudice to the appellants and the appellee=s participation at oral argument will be helpful. The appellee=s participation may be restricted. Albert v. George, 15 FSM R. 574, 577 (App. 2008).

The Complaint and Answer are pleadings that should normally be included in the appellant=s appendix. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 n.6 (App. 2008).

An appellant=s opening brief is due 40 days after the date of the appellate clerk=s notice that the record is ready and Rule 26(c) does not enlarge the 40 days even if the notice is served by mail. But the date when an appellees= brief is due is calculated by "30 days after service" of the appellant=s brief, and the time for an appellant to serve and file a reply brief is "14 days after service" of the appellee=s brief. Under Rule 26(c) six extra days are added when the brief whose service triggers the time period running is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

An opening brief is deemed filed when mailed, not when received by the clerk. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106 n.3 (App. 2008).

An attorney can be disciplined for ignoring or tardily responding to repeated court orders to file documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the appellate court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108-09 (App. 2008).

An attorney=s inability to comply with the court=s rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney=s failure to comply with such rules and orders. The attorney=s admitted inability to produce an appellate brief in a timely manner would not prevent him from being disciplined under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Rule 34(a) exhibits a marked preference for oral argument on the merits, although the parties may waive oral argument unless the court directs otherwise, but Rule 2 provides a ready means for dispensing with oral argument, especially when argument would not be on the merits. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 & n.10 (App. 2008).

The FSM Supreme Court appellate division may, in the interest of expediting decisions or for other good cause shown, suspend the requirements or provisions of any of the appellate rules in a particular case on a party=s application or on its own motion except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument, Rule 2 would permit the court to dispense with oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

The Constitution=s due process protections do not require appellate oral argument. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an

attorney=s inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules= timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Counsel can certainly be disciplined for ignoring or tardily responding to repeated court orders to file appellate documents and briefs, and failure to prosecute an appeal with due diligence is sanctionable under Appellate Rule 46(c). It is not required that the court find intentional conduct in order for an attorney to be disciplined under Rule 46(c). Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 124 (App. 2008).

The inability of a law firm or of an attorney to comply with the court=s rules and orders governing the filing of briefs and appendixes within the time deadlines does not excuse the attorney=s or the firm=s failure to comply with such rules and orders. Thus, an attorney=s admitted inability to produce an appellate brief in a timely manner would not prevent him, or his law firm, if it had had notice, from being disciplined under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 124 (App. 2008).

There is a marked preference for oral argument on an appeal=s merits, although he parties may, of course, waive oral argument unless the court directs otherwise. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 126-27 & n.11 (App. 2008).

Appellate Rule 2 provides a ready means for dispensing with oral argument, especially when the argument would not be on the merits. In the interest of expediting decisions, or for other good cause shown, the rule allows the appellate division, on a party=s application or on its own motion, to suspend any of the rules= requirements or provisions in a particular case except as otherwise provided in Rule 26(b), which prohibits the court from enlarging time to file an appeal or to seek permission to appeal and does not mention oral argument. Thus, even if Rule 34(a) were read to require oral argument in all final dispositions, Rule 2 would permit dispensing with oral argument. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 127 (App. 2008).

The Constitution=s due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116,

127 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 127 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant=s failure to timely file a brief. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules= timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 131 (App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

An appellee will not be allowed to participate in oral argument when it failed to file a brief. Kasmiro v. FSM, 16 FSM R. 243, 244 (App. 2009).

Even if the appellate clerk omits the due dates for briefs in his notice that he has received the record, counsel should, because the record is certified by the trial division clerk before transmittal to the appellate clerk, consider that the record has been certified and that the time for briefs to be filed has started. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

When the parties receive the appellate clerk=s notice that he has received the record, the parties

have been notified that the record has been certified and that the appellant=s brief is due 40 days hence and should conform their behavior accordingly. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

By rule, an appellant must serve and file a brief within 40 days after the date of the appellate clerk=s notice that the record is ready. The date of the clerk=s notice that the record is ready triggers the running of the due date of an appellant=s brief. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules= time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, oral argument is not set until after the necessary steps have been taken to allow for the preparation of brief, namely the certification and notice that the record is available, which notice provides the date from which the forty-day deadline for filing an opening brief is counted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When, on October 10, 2002, the appellants designated the entire trial court record and ordered a transcript of all trial court testimony for the appeal; when, almost five years later, on September 23, 2007, appellants= counsel filed a motion to certify the record although during the numerous proceedings during the almost five-year interim between the designation of the record and the motion to certify, counsel did not raise the issue of certification and availability of record, but instead requested continuances based on the existence of ongoing settlement negotiations and the need for additional time to prepare a brief; when, if counsel had, at any time after August 10, 2004, inquired with the clerk regarding the record he would have discovered that the record was certified and available; when the case was first called for oral argument on May 2, 2007, and the appellants then represented to the court that continuance was needed for reasons other than any delay in assembling and transmitting the record, the court is not inclined to consider the clerk=s apparent oversight in promptly notifying the appellants that the record was available as a reason for the appellants= continuing failure to meet court deadlines for filing their brief. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

While it is the clerk=s obligation to notify counsel when the record is ready, counsel also has an obligation to ensure that the record is assembled and transmitted. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants= subsequent failure to file a brief without good cause against the clerk=s apparent delay in notifying counsel of the record=s certification and availability, and against the court=s preference to hear an appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. App. 2009).

As required by Appellate Rule 28(a)(1), all appellate briefs are required to include certain helpful features – a statement of issues, a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with page references. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 418 & n.2 (App. 2009).

The burden is on the appellant to apply, before his time allowance has run, for additional time to file a brief upon a showing of real need which will not unduly prejudice the appellee, and until such application

for extended time to file a brief is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Lewis v. Rudolph, 16 FSM R. 499, 501 (Chk. S. Ct. App. 2009).

If an appellant fails to appear for oral argument, the court may hear argument on behalf of the appellee if his counsel is present, but an appellee that has not filed a brief will not be heard at oral argument. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

Although, ordinarily, the appellate court would consider the clerk=s failure to provide a requested English-language transcript as good cause to grant an enlargement of time for an appellant to file its opening brief, when the appellant did not request the transcript until seventeen months after it filed its notice of appeal and when the appellant gives no explanation why its transcript request was made then although the rules require an appellant to make its transcript request within ten days after filing the notice of appeal, it is evidence of a lack of good faith because it is the appellant=s burden to apply, before its time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee and, failing extraordinary circumstances, it constitutes neglect which will not be excused. If no extraordinary circumstances are present, the appellant=s motion to enlarge time for it to file its opening brief will be denied. Kosrae v. Smith, 16 FSM R. 578, 579-80 (App. 2009).

Appellate Rule 10(b) is instructive in designating the specific portions of the trial transcript that comprise the record on appeal and it requires that, within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant request a transcript only of such parts of the proceedings not already on file as the appellant deems necessary. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 79 (App. 2010).

The record on appeal includes the transcript of proceedings designated and ordered by the parties, as specified in Appellate Rule 10(a), and the clerk must transmit the record when requested, but, when there is more than one set of appellants in a case, there may not be a single record on appeal. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

When each set of appellants= actions are separate, one set of appellants may not access the portions of the trial transcript created specifically for use in the separate appeal initiated by another appellant. Allowing one set of appellants to do so would permit them to make an end run around the transcript request and payment mechanism provided for in Appellate Rule 10(b), and would permit them to unfairly benefit from the proper transcript request and payment made by another appellant. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

If one set of appellants wants to access portions of the transcript they had not properly requested and paid for but which was ordered by a different appellant, they are free to either request portions of the trial transcript from the other appellant if they work out an equitable payment scheme with that appellant or they may submit a supplemental transcript order to obtain the requested portions of the transcript from the court reporter at the fee set by General Court Order No. 1991-3. Neither the Rules of Appellate Procedure nor the general principles of equity permit appellants to obtain from the Clerk=s Office portions of the trial transcript they did not request in their original transcript order and for which they have not compensated the court reporter. Iriarte v. Individual Assurance Co., 17 FSM R. 78, 80 (App. 2010).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

An appellant=s failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court=s judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court=s factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court=s findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

"Service" is the key word in the Rule 26(c) provision that whenever a party is required or permitted to do an act within a prescribed period after service of a paper on that party and the paper is served by mail, six days is added to the prescribed period, but the prescribed period for filing the appellant=s opening brief is not triggered by service. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 31(a)=s language is clear that an appellant must serve and file a brief within 40 days after the date of the Supreme Court appellate division clerk=s notice that the record is ready. The appellate clerk must, on receipt of the "record ready certificate" from the clerk of the court appealed from, file it and must immediately give notice to all parties of the date on which it was filed and the date, 40 days after the appellate clerk=s notice, when the appellant=s brief will be due. Berman v. Pohnpei, 17 FSM R. 251, 253 & n.1 (App. 2010).

Rule 26(c) does not apply to an appellant=s opening brief since the prescribed period for the brief=s filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant=s opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Among the documents which an appendix may include are any exhibits relied upon by either party, or at issue, in the appeal. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When an appellant argues that some of the trial court=s legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot conclude that the deposition transcript is relevant. Thus, if the deposition transcript=s assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as

scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Citations to specific documents from the record included in the appellants= appendix must cite to the specific page numbers in those documents. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 500 n.I (App. 2011).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

Since a trial court=s findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court=s findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants= arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 n.2 (App. 2011).

Documentary evidence that is offered and excluded should be listed as part of the certification of record and so should be a part of the record on appeal to the State Court, which would consider and decide, on a party=s assignment of error, if it had been improperly excluded. If evidence that was offered and excluded is not listed in the certified Land Court records as an excluded exhibit, the evidence=s proponent, and the State Court if it considers the evidence, ought to be able to point to where in the record it was offered. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 n.3 (App. 2011).

If an appellee has not actually received a copy of the appellant=s opening brief, he may ask the appellate clerk to make a copy for him with the copying cost to be, after the appeal has been decided, taxed by the court on the non-prevailing party. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The cover of the appellant=s brief should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief gray, and if separately bound, the appendix=s cover should be white. These cover colors are for the judges= convenience, and, as should be apparent from the rule=s text, the correct brief color is not mandatory but advisory. Since it is not mandatory, the clerks do not have the authority to refuse to file a timely brief otherwise in compliance with the rules but with a cover not the correct color. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

The court clerks certainly should bring any deficiencies to the brief filer=s attention and seek compliance. If compliance is not obtained, the clerk should inform the presiding justice so that the justice can make an appropriate order. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Even when litigants have violated mandatory sections of Appellate Rule 32(a) governing the form of briefs, the remedy has not always been for the court (not the clerk) to refuse to file the brief. Courts will instead impose sanctions on counsel personally. Kosrae v. Edwin, 18 FSM R. 507, 512 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants= petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be

used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

The cost of printing or otherwise producing necessary copies of briefs, appendixes or copies of records is taxable in the Supreme Court appellate division by stating them in an itemized and verified bill of costs which the party must file with the appellate clerk, with proof of service, within 14 days after the entry of the appellate judgment. George v. Sigrah, 19 FSM R. 210, 220 (App. 2013).

Costs incurred in the preparation and transmission of the record and the costs of the reporter=s transcript must be taxed in the court appealed from as costs of the appeal in favor of the party entitled to costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A brief was timely filed on November 12, 2013, when the appellate clerk=s office was closed on the due date, Friday, November 8, 2013; when Monday, November 11, 2013, was a national holiday; and when November 12, 2013, was the next day that the clerk=s office was open for business. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

An appellant must include a transcript of all evidence relevant to the trial court=s decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

An appellant=s failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission=s decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties= briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

It is not the court=s responsibility to search the record for errors; the parties= briefs must clearly denote those portions of the record that support their arguments. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

By statute, the Kosrae State Court decides appeals from the Land Court on the parties= briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

It is incumbent on the appellants to ensure that any alleged "essential facts" are made part of the record for the appellate court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused.

Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice=s power to dismiss an appeal upon stipulation of the parties or upon a party=s failure to comply with the Rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Appellate Rule 30(b) encourages the parties to agree about the appendix=s contents and that failing, an appellant is required, no later than ten days following issuance of the record ready notice from the clerk=s office, to serve on the opposing party a designation of the portions of the record that the appellant intends to include within the appendix, along with a statement of issues to be presented for review. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 313 (App. 2016).

Appellate Rule 30(b)=s mandatory language contemplates that the appellants will serve its intended designation of the record and statement of issues on the appellee, giving the opposing party the opportunity to supplement that designation by imposing a duty on the appellants to include within the appendix the portions sought by appellee. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Appellate Rule 28(e) requires the parties, in their briefs, to cite to the record as included in the appendix or the record as a whole. Equally important as the provision of an appendix to both the appellate panel and appellee=s counsel, is the proper referencing to the record in appellant=s brief. Clear identification of parts of the record containing matter that forms the basis for appellant=s argument is the brief writer=s responsibility, as the court is not required to search the record for error. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

Since the appellants have neglected to comply with Rule 30(b) when they did not contact the appellee to solicit its input about the appendix=s contents and when there were other deficiencies in the appendix=s composition, the appellants will be entitled to cure those procedural defects, as their noncompliance did not rise to the level of willful conduct and remedying the cited deficiencies within a finite period of time will not unduly prejudice the appellee. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314-15 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants= appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants= "amended" brief. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court=s discretion to dismiss an appeal for late filing of an appellant=s brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Notwithstanding that the court for good cause shown may upon motion enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time, the court does not condone what it may perceive as a practitioner causing undue delay in fling a brief. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel=s inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

Upon the appellee=s motion, certain documents in the appellants= appendix were stricken when a search did not reveal those documents in the certified record. Sam v. FSM Dev. Bank, 20 FSM R. 409, 414-15 (App. 2016).

Appellate Rule 30(a) requires an appellant to file with the appellant=s brief, an appendix that must contain the relevant and essential portions of the record, including those parts to which the parties wish to direct the particular attention of the court, and a document that should be included is any portion, relied upon by counsel, of the transcript of the proceeding in the court appealed from, unless it was reproduced in a transcript filed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Clear identification of parts of the record containing matter that forms the basis for appellant=s argument is the brief writer=s responsibility, as the court is not required to search the record for errors. It is not the court=s responsibility to cobble those relevant sections of the transcript which constitute the gravamen of the appellants= claim. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Under Appellate Rule 10(b)(3), when an appellant neglects to communicate with the opposing party about which portions of the record it intends to request, the appellee is deprived of an opportunity to designate additional parts, if not the entire transcript. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 650 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants= motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk=s notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal=s dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant=s failure to file on time; and the extent of appellant=s

efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to such finding or conclusion because it is not the appellate court=s responsibility to search the record for errors. The parties= briefs must clearly denote those portions of the record that support their arguments. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

In the appellate court, unlike the trial court, a party does not have an automatic right to appear pro se and must seek permission. In the absence of express appellate division permission to appear without the supervision of an attorney, the court will require all appellate level briefs and other documents to be signed by an attorney authorized to practice before the FSM Supreme Court. Any appellate submissions not so signed shall be rejected by the Clerk of Courts. Jano v. Santos, 21 FSM R. 241, 243 n.1 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the FSM Supreme Court appellate division chief clerk, but when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty and the court appealed from has no notice its judgment or order has been appealed and therefore might unknowingly take further actions that are inconsistent with the matter=s status as one subject to further appeal. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Appellants are responsible for presenting to the court, a record sufficient to permit the court to decide the issues raised on appeal and one which provides it with a fair and accurate account of what transpired in the trial court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

An appellant must timely file a request for a transcript or a statement of the issues, a designation of the appendix, and an opening brief with an appendix. An appellant=s failure to comply with these rules may subject its appeal to dismissal. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

Clear identification of parts of the record containing the matter that forms the basis for the appellant=s argument is the brief writer=s responsibility, and when the record provided by the appellant does not provide the court with the basis for the trial court findings, the appellate court must presume the findings are correct because, by not providing an adequate record, the appellant cannot successfully challenge those findings. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

When an appellant filed an appendix, but failed to include the relevant filings concerning the issue of whether the trial court abused its discretion in denying the motion for enlargement of time, the record does not demonstrate error and the appellate court must presume the trial court acted within its discretion. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

When an appellant has not included in the appendix parts of the record that the appellee has designated as needed, the appellee may supplement the appendix. The parts of the supplemental appendix that were part of the trial court record are, as a matter of course, allowed. Setik v. FSM Dev. Bank, 21 FSM R. 505, 513 (App. 2018).

If a party wants an appellate court to take judicial notice of matter outside the record, it must provide the court with the necessary information. A supplemental appendix, with the items therein for which judicial notice is sought clearly labeled as such, is a perfectly acceptable method to do this. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

Vague generalizations of an appellant=s statement of issues – that the lower court decision was erroneous and contrary to law – are unhelpful, not only to the court, but also to the parties, and to

effective advocacy of appellants= position. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

The drafting of the statement of issues involved is the phase of appellate advocacy which calls for the greatest degree of skill, and is the part of the job most frequently botched by counsel. In such instances, one often needs to read the whole of both briefs and then match one against the other in order to ascertain what the disputed question really is. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

Six tests are suggested for an effective statement of issues: 1) the issue must be stated in terms of the facts of the case; 2) the statement must eliminate all unnecessary detail; 3) it must be readily comprehensible on first reading; 4) it must eschew self-evident propositions; 5) it must be so stated that the opponent has no choice but to accept it as an accurate statement of the question; and 6) it should be subtly persuasive. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

A generalized statement of issues that just says that the order appealed from was erroneous and contrary to law says nothing in terms of the case=s facts; has eliminated not only all unnecessary detail but also all necessary detail; is not readily comprehensible; and is stated in the form of a self-evident proposition, and so is unhelpful. Alik v. Heirs of Alik, 21 FSM R. 606, 615 (App. 2018).

When the appellants= statement of issues on appeal are unhelpful, the appellate court may recast the issues on appeal. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellant=s duty after filing a notice of appeal is to comply with the provisions of Rule 10(b) and to take any other action necessary to enable the clerk to assemble, certify and transmit the record. Within ten days of filing the notice of appeal, the appellant must order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary or, if no such parts of the proceedings are to be ordered, file a certificate to that effect. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

If the entire transcript is not ordered, the appellant must within 10 days of filing the notice of appeal, file a statement of the issues the appellant intends to present on the appeal and serve on the appellee a copy of the statement and of the transcript order or certificate of no transcript. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

When an appellant has ordered the entire transcript and has thus discharged its duty as an appellant, the alternative methods of creating a trial court record are unneeded or unusable, and there is no basis to dismiss the appeal for the appellant=s alleged failure to perform its duty. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41-42 (Chk. S. Ct. App. 2018).

The court reporter=s duty is to prepare and file the transcript within 30 days or such longer time as the court reporter has requested and the appellate clerk has approved. When the transcript is complete, the reporter must file it with the trial court clerk, and, when the trial court record, including the transcript, is complete, the trial court clerk will transmit the record to the appellate clerk. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

Once the appellate clerk has received the record from the trial clerk, the appellate clerk must file it and immediately give notice to all parties of the date on which it was filed. The appellant=s opening brief is due within 40 days after the date on which the record is filed. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

Appellate Rule 31(a), and not the court, sets the times to file and serve appellate briefs. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

When the court reporter has not completed the transcript, the trial court clerk cannot transmit the certified record to the appellate clerk, and, when there is no certified record with the appellate clerk, the

briefing schedule will not start. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

A statement of issues that the trial court order "was erroneous, contrary to law, and was not based on substantial evidence," and that the trial court violated the appellants= "constitutional and state law rights and other common law rights," is a generalized and scattershot framing of issues that is unhelpful to an appellate court and to all the parties, especially the appellants, since it is a missed opportunity for effective appellate advocacy. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When it comes to the statement of issues, too many brief writers fall into one of two errors: 1) they reproduce the headings from the body of the brief; or 2) they state the issue in terms so general as to be useless. Both errors are annoying and both represent missed opportunities for effective advocacy. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

One should assume that Rule 28(a)(2), which requires a statement of issues in the brief, does not ask an advocate to do an idle act. The statement of issues is there for a purpose. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

Generalized statements of issue give the reader no guide as to what follows. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When the appellants= statement of issues is so generalized as to be no statement at all, it requires the appellate court to sift through the brief to ascertain what issues they might actually be arguing. Setik v. Perman, 22 FSM R. 105, 113 (App. 2018).

When the issues presented on appeal are framed as the lower court orders "are erroneous and contrary to law," this statement of the issues is too general to be meaningful. The statement of issues should tell the court the question or questions raised. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

The statement of issues must be specific. They must not be so general as to be meaningless. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

In every appellate case, the ultimate question is whether the judgment of the court below should be affirmed or reversed, whether it was supported by the evidence or whether the lower court committed prejudicial error. Stating the issues in such general terms, therefore, tells the court essentially nothing about the particular questions in the case. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

Appellate Rule 28(a)(2), requires a statement of issues in the brief. It does not ask an advocate to do an idle act. The statement of issues is there for a purpose. Jackson v. Siba, 22 FSM R. 224, 229 (App. 2019).

– Decisions Reviewable

FSM Appellate Rule 9's purpose is to permit a defendant held in custody, or subjected to conditions of release, to receive expedited review of that restriction of his freedom. There is no suggestion in the rule nor in any other authority indicating that the government is entitled to appeal from the pretrial release of a defendant. FSM v. Yal=Mad, 1 FSM R. 196, 198 (App. 1982).

The court will not issue a writ of certiorari to review the trial court=s suppression of defendant=s confession in a case in which no assignments of error are furnished to the court, although such decision effectively terminates the case because the government cannot continue its prosecution without the confession, and although no appeal is available to the government. In re Edward, 3 FSM R. 285, 286-87 (App. 1987).

A petition for certiorari will not be granted unless it delineates the act or acts alleged to be in error with sufficient particularity to demonstrate material, harmful error. In re Edward, 3 FSM R. 285, 288 (App. 1987).

There are no FSM statutory or constitutional provisions that expand or establish the grounds for a writ of certiorari beyond its customary scope. In re Edward, 3 FSM R. 285, 289 (App. 1987).

Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. In re Main, 4 FSM R. 255, 257 (App. 1990).

Where it is unclear as to what rights a state trial court found the appellants had and the FSM court is unequipped to define those rights, and when the FSM appellate panel remains unsatisfied that the due process issue was raised below, although not determinative these are additional factors militating against FSM Supreme Court, appellate division review of a state trial court decision. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 325 (App. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 324 (App. 1992).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

An appeals court has no jurisdiction over a motion for an injunction filed after final dismissal of the appeal case. Damarlane v. Pohnpei Transp. Auth. (II), 6 FSM R. 167, 168 (App. 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state=s constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

When no motion for relief from judgment was filed in the trial court and the appellant appealed from an order in aid of judgment, the appellate court cannot address the validity of the underlying judgment as the issue was never properly raised before the trial court. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419-20 (App. 1996).

On appeal, a party will be limited ordinarily, to the specific objections to evidence made at trial and the appellate court will consider only such grounds of objection as are specified. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A party cannot raise an issue upon appeal that he did not raise at the trial level, simply because the result of not raising the issue dissatisfies him. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

A broadly stated affirmative defense not argued at trial and on which no evidence has been submitted and which was therefore summarily rejected by the trial court has not been preserved for appeal. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 618 (App. 1996).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under her own name and as the real party in interest. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

An objection to the amount of a monetary sanction cannot be raised for the first time on appeal. In re Sanction of Berman, 7 FSM R. 654, 658 (App. 1996).

A tentative agreement to a stipulated order cannot preclude a party from appealing the order actually entered by the trial court when it differs from the stipulation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

The FSM Supreme Court=s jurisdiction is derived from the FSM Constitution which grants the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM R. 460, 461 (Chk. 1998).

There is no persuasive authority that should a garnishee pay a judgment pursuant to a garnishment order, that the garnishee would waive its rights to appeal. Louis v. Kutta, 8 FSM R. 460, 462 (Chk. 1998).

The FSM Supreme Court appellate division has jurisdiction over appeals from final decisions of the Chuuk State Supreme Court appellate division because the state constitution so permits. Chuuk v. Ham, 8 FSM R. 467, 468 (App. 1998).

Appeals may be taken to the appellate division of the FSM Supreme Court from all final decisions of the trial division of the Kosrae State Court and from any other civil case if permitted as a matter of state law. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

With some exceptions, the FSM Supreme Court does not exercise jurisdiction over appeals that are not from final decisions. Damarlane v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

The FSM Supreme Court can hear appeals from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national Constitution, national law, or a treaty. Damarlane v. Pohnpei, 9 FSM R. 114, 117 (App. 1999).

A motion to reconsider dismissal of an appeal by the Pohnpei Supreme Court appellate division is relief under comparable rules of any state court from which an appeal may lie equivalent to motions under the rules specifically cited in FSM Appellate Rule 4(a)(4) because the motion seeks reversal or modification of an earlier dispositive order. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the

Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A party to an appeal in which the Chuuk State Supreme Court appellate division has rendered an appellate decision may appeal such decision to the FSM Supreme Court appellate division by certiorari, except in a criminal case in which the defendant may appeal as of right. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

A petition for writ of certiorari that seeks to appeal an order by a single Chuuk State Supreme Court appellate justice is not an appellate decision. The FSM Supreme Court therefore lacks jurisdiction to consider it. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel=s dispositive "decision." Wainit v. Weno, 9 FSM R. 160, 162-63 (App. 1999).

Once an appellant has sought and obtained review of a single justice=s order by the appellate panel of the Chuuk State Supreme Court appellate division, the FSM Supreme Court appellate division may then review that decision. At that point the FSM Supreme Court has jurisdiction to hear the appeal, but not before. Wainit v. Weno, 9 FSM R. 160, 163 (App. 1999).

The FSM Supreme Court=s appellate jurisdiction over matters decided by the Chuuk State Supreme Court originates in article XI, section 7 of the FSM Constitution. Chipen v. Election Comm=r of Losap, 9 FSM R. 163, 164 (App. 1999).

In the Chuuk State Supreme Court appellate division the action of a single justice may be reviewed by the court. Chipen v. Election Comm=r of Losap, 9 FSM R. 163, 164 (App. 1999).

Decisions of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

An appeal dismissed because it is not from a final order is dismissed without prejudice to any future appeal made from the order once it has become final. Santos v. Bank of Hawaii, 9 FSM R. 285, 288 (App. 1999).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case=s outcome and the issues it raised on appeal are moot. FSM v. Louis, 9 FSM R. 474, 482-83 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM=s sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM=s appeal is thus moot. FSM v. Louis, 9 FSM R. 474, 483-84 (App. 2000).

When it appears that a case comes before the FSM Supreme Court appellate division as a final decision entered by the Chuuk State Supreme Court appellate division, the review of such a decision may be had before the FSM Supreme Court appellate division. Bualuay v. Rano, 9 FSM R. 548, 549 (App. 2000).

The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error, or error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Hartman v. Bank of Guam, 10 FSM R. 89, 95 (App. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A discovery order is not appealable. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

No justiciable controversy is presented if events subsequent to an appeal=s filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

A single justice=s decisions are reviewable by the court and may be so reviewed when a full appellate panel of judges has been assembled. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

An appellate court has jurisdiction over an appeal only if it is timely filed. The time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

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

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

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

In an appeal from an administrative agency to the FSM Supreme Court appellate division, Appellate Rule 26(b) would control. That rule precludes the appellate division from enlarging the time for filing a notice of appeal from an administrative agency. Because this provision limits the appellate division=s power to enlarge time, it is jurisdictional. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

The appealability of the denial of dismissal of a criminal case is an issue for the appellate division since it goes to their jurisdiction. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

When the court is of the opinion that its order involves a controlling question of law, and that an immediate appeal from its order will materially advance the ultimate termination of the litigation, as well as other cases, the court may permit a party to seek permission to appeal pursuant to Chuuk Appellate Rule 5(a). Kupenes v. Ungeni, 12 FSM R. 252, 257 (Chk. S. Ct. Tr. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant=s failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM R. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM R. 354, 356-57 (Chk. S. Ct. Tr. 2004).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

The Kosrae State Court has jurisdiction to review all decisions of inferior courts. Neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to the State Court appellate division. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415,

421 (Kos. S. Ct. Tr. 2004).

A Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Under an exception to the mootness doctrine, when the court=s rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final judgment and in which they will merge. The purpose of an appeal of a final judgment is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This procedure advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The FSM Supreme Court has exclusive jurisdiction when all parties are agents of the national government and no issue involving land is presented. When the court of first instance is the appellate division, and not the trial division, the appellate division=s jurisdiction is necessarily derivative of the trial division=s since the Supreme Court appellate division may review cases heard in the national courts. Whether the case is in a proper procedural posture is different from the question of the appellate division=s subject matter jurisdiction, so the threshold question is whether the appellate division may exercise that jurisdiction as the court of first instance. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

Since the Kosrae statute requires that within 90 (ninety) days of receipt of the certified copy of the notice of appeal, the Land Court must provide to the Kosrae State Court a complete written copy of the transcript of proceedings, when the transcript that is part of the record is only a summary of the Land Court hearing and not a verbatim transcript and when the tape of the hearing has either been erased or is inaudible and it is thus not possible to produce a complete transcription of the hearing now, the court, in light of the statute=s requirement, can see no alternative but to remand the matter to the Land Court for rehearing. The sole purpose of this rehearing is to insure that a complete record of the hearing is made and preserved so that a verbatim transcript may be prepared. Heirs of Mackwelung v. Heirs of Mongkeya, 13 FSM R. 20, 21 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government=s removal of that case to the FSM Supreme Court does not affect the court=s jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since the issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O=Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys= fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

An appeal from an adjudicated matter in the Kosrae Land Court may be made within sixty days of service of the Land Court Justice=s written decision upon the party appealing the decision. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting the appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

When an individual, who was not a party to the Land Court proceedings, likely does not have standing to appeal the Land Court decision, and when the Heirs of Joseph Nelson, as the claimant and party who claimed ownership of the subject parcels at the Land Court proceedings, may be indispensable parties to this litigation and should have appeared as appellants but did not, the court may be without jurisdiction to consider the appeal filed by the individual in his individual capacity. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An appeal from an administrative agency must be started within the established statutory time period. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director=s certification of the election results and the Director=s denial of a timely post-certification petition by the candidate. If the Director=s decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director=s decision to appeal to the FSM Supreme Court appellate division if the Director=s decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate=s post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court=s involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate=s petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate=s appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director=s decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys= fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

When the appellant introduced no evidence of customary law at anytime before the appeal, it is deemed to have waived the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When the issue of custom was not raised before the trial court, it can be disregarded on appeal on that ground alone. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 n.6 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

When the appellants appeal from a decision fully in their favor; when the appellants challenge the ownership of a portion of Parcel 069M05, which shares a boundary with Parcel 069M03 but their appeal is from a Land Court determination of the ownership for Parcel 069M03 in their favor; when all parties agree the appellants own Parcel 069M03; when the appellants admit that they are disputing the ownership of a portion of Parcel 069M05, which is not part of the Land Court determination in the matter below; and when the appellants previously appealed the determination about that parcel and the court=s order in that previous case is final, there is no justiciable dispute being presented to the court in the appeal. Heirs of Tulenkun v. George, 14 FSM R. 560, 561-62 (Kos. S. Ct. Tr. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been

denied. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 4 (App. 2007).

If a losing candidate wanted to appeal the National Election Director=s April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director=s alleged non-decision, filed before the Director=s April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant=s claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court is limited to the trial court=s final orders and judgments. Final orders and judgments are final decisions. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

The general rule is that appellate review of a trial court case is limited to the trial court=s final orders and judgments. Final orders and judgments are final decisions. Bossy v. Wainit, 15 FSM R. 30, 32-33 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant=s claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive=s ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

When an appellant asks to be advised on whether, if he goes to trial, and if he is convicted on more than one count, and then if he is sentenced on more than one count, would his sentence then violate his right not to be subjected to double jeopardy, any ruling the appellate court could make would be in the nature of an advisory opinion and the court does not have the jurisdiction to issue advisory opinions. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167-68 (App. 2007).

No justiciable controversy is presented if events subsequent to an appeal=s filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot, and if the appeal has become moot, the court no longer has jurisdiction to hear and decide it. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

The Kosrae State Court normally reviews a Land Court order or decision in an appeal. But when the court is reviewing the Land Court=s issuance of title where there was no hearing and appeal and no statutory procedure is set for this type of review and when the Kosrae Constitution provides that the State

Court has jurisdiction to review all inferior court decisions and when the State Court has the power to make rules and orders, and do all acts, not inconsistent with law or rule, required for the due administration of justice, based on the constitutional grant of jurisdiction and on the power to administer justice, the Kosrae State Court will review the issuance of certificate of title. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the case clearly raises issues concerning the FSM Constitution since the appellant claimed a violation of the FSM Constitution, which he not only asserted early on in the case, but which the Pohnpei Supreme Court appellate division also considered in rendering its opinion, the FSM Supreme Court thus not only has jurisdiction over the case, but its consideration of the state court=s determination that the appellant=s letter is not protected speech under the FSM Constitution is also ripe for review since FSM Constitution Article XI, Section 7 provides that the FSM Supreme Court appellate division has jurisdiction to hear appeals from cases heard in state and local courts if they require interpretation of the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court=s determination of a litigant=s rights under that state=s constitution may be final and not subject to review by the FSM Supreme Court, a state court=s determination of a litigant=s rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court=s jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution=s supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

The FSM appellate rules, and the cases interpreting them, clearly enunciate that untimely filing of a notice of appeal deprives the appellate division of jurisdiction. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When the appellant=s error was not one of timeliness but rather one of not filing in all the appropriate courts because the appellant timely filed her notice of appeal in the Kosrae State Court, and later did perfect her appeal within the extended 72-day period by properly filing her notice of appeal with the FSM Supreme Court appellate division 57 days after the Kosrae State Court=s entry of judgment, the appeal is permissible, despite being directed to the wrong court, since the appeal: 1) was otherwise valid and timely; 2) steps were taken to correct the error; 3) the steps to correct the error were undertaken within the period of extension allowed by our rules; and 4) there was no prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

When no substantial activity took place on the appeal before counsel filed his motion for pro hac vice admission or before his full admission to the FSM Supreme Court bar after he passed the FSM bar examination and when that counsel did not submit the appellant=s brief until he was fully licensed to

appear before the appellate division as contemplated by Appellate Rule 46(a) thus complying with Appellate Rule 31(d)=s explicit mandate, which requires all briefs to be signed by licensed attorneys admitted to the FSM Supreme Court, the appeal was not precluded either by the appellant=s flawed notice of appeal or the fact that her counsel was not admitted to practice before the FSM Supreme Court at the time the notice of appeal was filed in the FSM Supreme Court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395-96 (App. 2007).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Even when neither party has raised the issue, an appellate court, as a court of limited jurisdiction, is obligated to examine the basis for its jurisdiction. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely notice of appeal from a final decision is a prerequisite to an appellate court=s jurisdiction over an appeal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys= fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When, while the judgment was on appeal, the appellant=s recusal motion was filed at the same time as her Rule 60(b) motion for relief from judgment and the recusal motion had to be decided before any action could be taken on the Rule 60(b) motion, and when the appellant did not file a separate notice of appeal from the post-judgment order denying recusal, the appellate court accordingly lacks jurisdiction to review the recusal issue. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

An appellate court is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Alanso v. Pridgen, 15 FSM R. 597, 598 n.1 (App. 2008).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing

of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM Supreme Court appellate division never acquired jurisdiction over the case. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

Appeals may be taken from all final decisions of the Kosrae State Court within forty-two (42) days after the date of the entry of the judgment or order appealed from. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An order from the Kosrae State Court may be a final decision for the purposes of appeal. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court=s findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Where the Kosrae Code provides that government appeals in a criminal proceeding are limited to when the Kosrae State Court has held a law or regulation invalid, and further provides that on a government appeal from a criminal proceeding the appellate court may not reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation; and where the prosecution=s basic claim on appeal is that the trial court ought to have found that the defendant had the requisite intent required for the charge of aggravated assault, and that the trial court=s interpretation that the evidence was insufficient to prove the required intent was wrong, it is not the type of prosecution appeal authorized by the Kosrae statute, and the FSM Supreme Court therefore lacks jurisdiction over it. The motion to dismiss will be granted on this ground. Kosrae v. Langu, 16 FSM R. 83, 87-88 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 131 (App. 2008).

Although appellants could have addressed the issue of deficient notice of trial with an appropriate filing in the trial court, they were not required to before filing an appeal since a trial court may not shirk its responsibility to provide notice in compliance with due process merely because a party has a measure of recourse when notice is deficient. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

Where a plain error is involved that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings, a party will not be deemed to have waived the right to challenge the issue on appeal. In such cases, where the court=s integrity is brought into question because the court did not follow its own procedures for providing notice of trial, the only remedy is to permit a new trial where adequate notice is given. Farek v. Ruben, 16 FSM R. 154, 157-58 (Chk. S. Ct. App. 2008).

An appeal to the FSM Supreme Court appellate division may be made from all "final decisions" of the FSM Supreme Court trial division. Barrett v. Chuuk, 16 FSM R. 229, 233 (App. 2009).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders or partial adjudications will eventually merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding once a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

A timely notice of appeal from a final decision is a prerequisite to an appellate court=s jurisdiction over an appeal. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

An appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

Under Chuuk election law, an appeal may be taken to the FSM Supreme Court appellate division from a Chuuk State Supreme Court appellate division decision in an election contest. Ueda v. Chuuk State Election Comm=n, 16 FSM R. 395, 397 (Chk. 2009).

A court=s subject-matter jurisdiction may be raised at any time by a party or by the court. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director=s decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 419 (App. 2009).

When an election contestant=s shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director=s reasoned review and decision. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate=s only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director=s decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does

not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm=n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

An appellate court is obligated to examine the basis of its jurisdiction. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Even if the prosecution succeeded in convincing an appellate court that a trial court=s rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

In a prosecution appeal from an acquittal in a Kosrae State Court criminal case, the appellate court has no jurisdiction to reverse a not guilty finding and to either order a guilty finding entered or to order a new trial and it has no jurisdiction to render an advisory opinion on statutory construction or to decide a moot appeal. It will accordingly dismiss the appeal. Kosrae v. Jim, 17 FSM R. 97, 99 (App. 2010).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission=s order for a revote because it is not an election contest since the appellant does not contest an election=s result or a candidate=s qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm=n v. Chuuk State Election Comm=n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When an intervener did not appeal the trial court decision, the appellate court need not address his trial court claim. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Even if no party has raised the issue, an appellate court is obligated to examine the basis for its jurisdiction. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 n.1 (App. 2011).

The well-established general rule is that only final judgment decisions may be appealed. The appellate court can also review certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, and it may also grant appellate review when the trial court has issued an order pursuant to Appellate Rule 5(a), and it can review those rare collateral orders that conclusively determine a disputed question resolving an important issue completely separate from the action=s merits but that are effectively unreviewable on appeal from a final judgment. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 359 (App. 2011).

Since a timely notice of appeal from a final decision is a prerequisite to the FSM Supreme Court=s jurisdiction over an appeal, when there was no final decision in the civil action below, the court is without jurisdiction to consider the appeal and the appeal will be dismissed without prejudice to the merits of any future appeal from a final judgment decision. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 359 (App. 2011).

An appellee that has not filed a cross-appeal cannot urge or be granted any affirmative relief in the manner of a modification, vacation, or reversal of a trial court ruling in the appellant=s favor. Berman v. Pohnpei, 17 FSM R. 360, 373 (App. 2011).

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division is obligated to examine the basis of its jurisdiction, *sua sponte*, if necessary. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

The Kosrae state constitution permits the FSM Supreme Court appellate division to review cases on appeal from the highest Kosrae state court in which a decision may be had, which, since no Kosrae State Court appellate division has yet been prescribed by law, is the Kosrae State Court trial division. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 648 (App. 2011).

A Kosrae small claims judgment does not qualify as a decision of "the highest state court in which a decision may be had" since there are further State Court proceedings available in which a decision may be had. A decision after a trial de novo on the State Court=s regular civil docket, instead of on its small claims docket, would be a judgment from the "highest" state court in which a decision could be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649 (App. 2011).

When a party=s sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court=s only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

When no party has paid any of the judgment, an appellate court cannot rule on whether parties would be liable for contribution to a co-defendant since there can be no actual case or dispute until the co-defendant has paid more than its pro rata share because anything the appellate court says now would be an advisory opinion and it does not have any jurisdiction to give advisory opinions. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

Since a prerequisite to an equitable indemnity claim is that the party seeking it (indemnitee) have discharged the liability for the party against whom it is sought (indemnitor), when neither party seeking indemnity has discharged any of their liability to the judgment-creditor, no equitable indemnity claim has yet accrued even if the cause of action were recognized. Since it has not, any appellate opinion about whether equitable indemnity ought to be recognized would only be an advisory opinion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject-matter jurisdiction is an issue that may be raised at any time. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court=s dismissal of the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the

appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Since the issue of a court=s subject-matter jurisdiction can be raised at any time, no cross-appeal is needed for the appellee to raise it, and since the appellate court has an obligation to examine the basis of its jurisdiction even if it must do so sua sponte, the appellate court must promptly address any claim that it lacks jurisdiction and examine the basis for its jurisdiction before it considers the appeal=s merits. Berman v. FSM Nat=l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat=l Police, 19 FSM R. 118, 123 (App. 2013).

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat=l Police, 19 FSM R. 118, 124 (App. 2013).

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat=l Police, 19 FSM R. 118, 127 (App. 2013).

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

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Generally, only final orders of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division, but the FSM Supreme Court may also hear appeals from the Kosrae State Court in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

An appellate court may receive proof or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013).

A court is precluded from making pronouncements on the basis of a hypothetical, abstract, or academic issue or when the matter is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

When an appellant asserts that the six-year statute of limitations means he is not legally liable for any payments that were due over six years before the lawsuit was filed and all the extra interest that accrued because those payments were missed and the appellee has conceded that the judgment against the appellant should be reduced by those amounts, the parties no longer have a legally cognizable dispute about this issue=s outcome and the issue is moot. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants= cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants= attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts and neither the Kosrae Constitution nor state law requires that Land Court decisions be appealed to a State Court appellate division. There is thus no requirement that an appeal from Land Court be heard by a three-judge panel in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301 (App. 2014).

The FSM Supreme Court appellate division has the power of appellate review of cases on appeal from the highest state court in which a decision may be had. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

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

The general rule is that appellate review of a trial court is limited to final orders and judgments. The exceptions to this rule include: review of injunctions, appointment of receivers, admiralty decisions, or other statutory rights. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal sanction was issued, when no fines were assigned, when no disciplinary action was ordered, when there was not an explicit finding of wrongdoing by the court, when there is only a footnote instructing the opposing party they have the right to investigate the matter and file a request for disciplinary action if they find reason, this is a non-decision, and as such, it is not appealable. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An FSM judge is required to memorialize proceedings, and in many cases, the appropriate action is an instructional footnote, rather than calling for full disciplinary hearing. Mori v. Hasiguchi, 19 FSM R. 414, 417 n.1 (App. 2014).

An appellant may not complain of an error in his favor in the rendition of a judgment. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The most distinctive feature of the doctrine of appellate standing to emerge from the adverse impact requirement is that a prevailing party cannot appeal from a favorable judgment to secure a review of unfavorable findings. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

Under the doctrine of appellate standing, an attorney cannot raise an appeal to revise the reasoning, or verbiage, of a decision if that decision is favorable to his client. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

An appellate court is obligated to examine the basis of its appellate jurisdiction, *sua sponte*, if necessary. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 606 (App. 2014).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

When, in order for the FSM Supreme Court appellate division to have jurisdiction over the second Nett District Court appellate division=s decision about whether the Nett Chief Justice should have heard the trial division case, the appellant would have had to have filed a notice of appeal from that decision. Since he did not, the FSM Supreme Court does not have jurisdiction to review the part of the second decision which the court would have had jurisdiction to review if there had been a timely notice of appeal, and since there was no timely notice of appeal from the decision that would require interpretation of the FSM Constitution=s due process clause, the appeal must be dismissed. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607-08 (App. 2014).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Narruhn v. Chuuk State Election Comm=n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm=n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Narruhn v. Chuuk State Election Comm=n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney=s own name and as a real party in interest. When the attorney was named in the notice of appeal=s caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

The well-established general rule is that only final judgment decisions may be appealed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely

motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Generally, an appeal from a trial judge=s ruling is to be taken only after completion of all trial proceedings. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The appeal of a trial court order partially dismissing claims was brought prematurely and was not ripe for review and also is not reviewable under the collateral order doctrine when it did not conclusively determine the rights and liabilities in the underlying multi-claim action, involving multiple parties; when the relevant order speaks directly to the action=s merits and found the dismissed claims to be unsupported by the facts pled in the complaint; and when a dismissal at this juncture would not preclude appellants from lodging an appeal once a final decision is entered. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appellate court will first consider an assignment of error that is a potentially dispositive threshold issue going to the court=s subject-matter jurisdiction because if the appellants prevail on the issue any opinion given on other issues would merely be advisory and the court does not sit to render advisory opinions since it lacks the authority to do so. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

An appellate court may receive proof of or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Esau v. Penrose, 21 FSM R. 75, 78 (App. 2016).

The Kosrae State Court has the authority to hear appeals from Land Court, but it cannot act until the Land Court has adjudicated the matter and an appeal has been filed. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions by the Kosrae Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

When service of the Land Court decision was made on someone who did not reside with the appellant, that service was insufficient, and the fact that the appellant became aware of the Land Court=s decision later is not equivalent to being properly served to safeguard her due process rights. If a party was not served notice and was then denied the right to appeal, his or her due process rights are violated. Esau v. Penrose, 21 FSM R. 75, 80-81 (App. 2016).

The statutory sixty-day period to appeal a Kosrae Land Court decision is tolled until proper service is made. Serving notice of a Land Court adjudication or decision, is required in order to give the party a chance to appeal, and if a party is not properly served the Land Court=s written determination of ownership, the statutory sixty-day appeals period does not run against that party. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

When a Kosrae Land Court decision was never properly served on the appellant, the Land Court will be instructed to properly serve its decision on the appellant, and the Kosrae State Court will then allow the appellant sixty days to file an appeal after the Land Court=s decision has been properly served. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

The FSM Supreme Court appellate division has jurisdiction to hear appeals from all final decisions of the Kosrae State Court trial division, if a notice of appeal is filed as provided in FSM Appellate Rule 3 within 42 days after the entry of the judgment or order appealed from. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

If the Kosrae State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court, with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate, but if the State Court affirms the Land Court decision, no further appeals to the State Court will be allowed. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 99 (App. 2016).

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

When the proper forum for the claim would have been a timely appeal from the Land Court, not a complaint filed outside the applicable time to appeal, the Kosrae State Court=s dismissal of the action will be affirmed. Lonno v. Heirs of Palik, 21 FSM R. 103, 109 (App. 2016).

The well-established general rule is that only final decisions may be appealed. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

An appellate court lacks jurisdiction over a matter that was not timely appealed because a October 22, 2015 notice of appeal is untimely for an appeal from a September 4, 2015 decision. Edwin v. Kohler, 21 FSM R. 133, 135 & n.1 (App. 2017).

When the appellant did not allege any facts, law, or error by the Pohnpei Supreme Court appellate division that implicate either interpretation of the FSM Constitution, national law, or treaty or a violation thereof, the appeal would not be properly before the FSM Supreme Court appellate division for review, even if the appellant were permitted to brief the matter and an FSM constitutional issue was raised for the first time. Edwin v. Kohler, 21 FSM R. 133, 136-37 (App. 2017).

An appellant offers the FSM Supreme Court appellate division no basis on which it could properly exercise jurisdiction, when he is content to recite the same self-serving statement that his due process rights were violated by the orders of the Pohnpei Supreme Court trial and appellate divisions without further explaining how or why those orders violated due process under the FSM Constitution. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

The FSM Supreme Court is not in a position to review Pohnpei Supreme Court appellate division decisions that do not involve interpretation of the FSM Constitution, national law or treaty, or that do not involve some other violation of the FSM Constitution, even when a litigant contends that court=s decision might have been wrongly decided. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

When an order in question disposes of all the claims against one of several parties, it clearly has the requisite finality to be appealable under Civil Procedure Rule 54(b) if the trial court has made a proper certification under that rule. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

While an appellate court may exercise broad discretion in granting permission for interlocutory appeal, it has no discretion to refuse to hear an appeal as a matter of right. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 n.3 (App. 2017).

When an appeal was certified under Appellate Procedure Rule 5(a) rather than Civil Procedure Rule 54(b), no appeal as of right is available. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The general rule is that an issue not raised below will not be considered for the first time on appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

When the Pohnpei Supreme Court appellate division did not, in its order denying that a motion to reconsider (or at any other time), address the appellant=s contention that a member of the appellate panel that issued the order of dismissal was disqualified from sitting on the appeal, it is apparent that the appellant properly raised, in the court below, an issue requiring interpretation of the FSM Constitution. Jano v. Santos, 21 FSM R. 241, 244-45 (App. 2017).

The FSM Supreme Court appellate division could properly exercise jurisdiction of an appeal from the Pohnpei Supreme Court appellate division when the appellant properly alleged an issue in the court below that implicated interpretation of the FSM Constitution but which the court below did not address. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

An appellate court is obliged to examine the basis for its jurisdiction even if neither party has raised a particular issue affecting jurisdiction. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

The interest protected by having exact time limits to appeal cases is the finality of judgments. While the paramount goal is to provide a full and fair opportunity for the parties to be heard and to reach an enlightened result understandable to all of the parties, an important subsidiary goal is to end the litigation itself and to reach a final decision. Jano v. Santos, 21 FSM R. 241, 245-46 (App. 2017).

The timely filing of a notice of appeal is jurisdictional and mandatory. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

An untimely filing of a notice of appeal absolutely deprives the appellate division of jurisdiction, and it must dismiss an appeal that was untimely filed no matter how meritorious it believes the appellant=s claims to be. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on a subsequent appeal. The three exceptions are: 1) the evidence at a subsequent trial is substantially different; 2) there has been an intervening change of law by a controlling authority; and 3) the earlier decision is clearly erroneous and would work a manifest injustice, but only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. When none of these exceptions apply, the law of the case doctrine requires the later appellate court to rely on the prior appellate decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

When the appellant has raised the issue that her due process rights were violated by the manner of the Pohnpei appellate division=s dismissal of her appeal and when, if the case ever came properly before the FSM Supreme Court appellate division, it would have appellate jurisdiction over at least part of the underlying case=s merits, because the appellant, in her trial court complaint, raised her due process and equal protection claims under both the FSM and Pohnpei Constitutions and pled her civil rights claim under the national civil rights statute, the FSM Supreme Court appellate division has jurisdiction to consider the one FSM Constitution due process issue she raises in this appeal. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

Chuuk courts are restricted in hearing only Alive@ cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Selifis v. Robert, 21 FSM R. 352, 353 (Chk. S. Ct. App. 2017).

A justiciable controversy may become moot subsequent to filing an appeal if certain events cause the parties to lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, and, if an appellate court dismisses a case as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Selifis v. Robert, 21 FSM R. 352, 353-54 (Chk. S. Ct. App. 2017).

The general rule is that appellate review of a trial court is limited to final orders and judgments. Final orders and judgments are final decisions. Fuji Enterprises v. Jacob, 21 FSM R. 355, 380 (App. 2017).

An appellate court will not consider an appellant=s arguments against certain defendants when no final adjudication has been made on the appellant=s claims against these particular defendants. Fuji Enterprises v. Jacob, 21 FSM R. 355, 360 (App. 2017).

An appellate court will normally dismiss an appeal for lack of jurisdiction when it is not from a final order because, although sanctions liability had been determined, the amount of those sanctions had not, but when a later appeal was from a final order (since it fixed the sanction amount) into which the earlier liability order merged, it did not matter whether the first appeal case was dismissed or consolidated with the later appeal case. Setik v. Mendiola, 21 FSM R. 537, 560 n.4 (App. 2018).

The FSM Supreme Court appellate division may exercise appellate jurisdiction over the merits of a Chuuk State Supreme Court appellate division case if the appeal is from a final order or judgment. Chuuk v. Chuuk State Supreme Court App. Div., 21 FSM R. 583, 585 (App. 2018).

When the date of the entry of judgment appealed from was June 14, 2017, and counsel neglected to

file a notice of appeal within the forty-two day period within which a party may file a notice of appeal, and no extension of time was sought or granted, the appellate court lacks jurisdiction to consider the appeal=s merits. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

The well-established general rule is that only final judgment decisions may be appealed. A final decision is generally one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

When an August 12, 2014 judgment disposed of all the questions within the post-judgment motion and left nothing as to a review or compliance with its order to be disposed of in the future, the order on that motion was a final order, and the appellant had 30 days to appeal the order but when it failed to appeal within that time limit, the appellate division lacks subject matter jurisdiction to review that motion. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

When, on February 19, 2015, the appellant appealed from a February 11, 2015 post-judgment order, it fell within the allowable time-frame for appeal and the appellate division has subject matter jurisdiction to review only that February 11, 2015 trial division order. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on subsequent appeal. The law of the case proscription applies regardless of whether the issue was decided explicitly or by necessary implication. This reflects the sound policy that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

Three exceptions to the law of the case doctrine permit a court to depart from a prior appellate ruling in the same case: 1) if the evidence at a subsequent trial is substantially different; 2) if there has been an intervening change of law by a controlling authority; and 3) if the earlier decision is clearly erroneous and would work a manifest injustice. Only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

The well-established general rule is that only final decisions may be appealed. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 283, 284 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

The well-established general rule is that only final decisions may be appealed. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287-88 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 289, 290 (App. 2019).

Generally, an appeal from a trial judge=s ruling is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The appellate court is the appropriate court to determine whether an appeal is proper. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. The general rule is that on appeal a party is bound by the theory advanced in the trial court and cannot urge a ground for relief which was not presented there. An issue raised for the first time on appeal is waived. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When the appellant never timely appealed the trial division=s denial of its motion for relief from judgment that asked the trial division to admit new evidence, res judicata bars that new evidence from being admitted within a different appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the summary judgment hearing and the trial were run one after the other like it was one proceeding, all blurred together and the defendant had raised during the summary judgment hearing the unfairness of the court considering the evidence the plaintiff was supposed to provide in response to the defendant=s discovery requests, but had not, the issue of whether the plaintiff could use that evidence at trial was preserved for appellate review. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

– Decisions Reviewable – Collateral Orders

Immediate appeals from collateral orders will sometimes be necessary when they have a final and irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate

from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A Rule 11 sanction establishing a party=s liability to the plaintiffs based on a third-party beneficiary claim and an agreement would be reviewable in an appeal from a final judgment setting forth, among other things, the amount of damages. The same can be said of the sanction awards of attorney fees and costs. When the sanctions all run to a party and can be reviewed on appeal after a final judgment is rendered, an adjudication on liability without determining damages (the amount of that liability) is not a final judgment, and is thus not appealable. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

A Civil Rule 11 attorney sanction order is immediately appealable, but only if the sanctioned attorney proceeds under his or her own name, as the real party in interest. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Immediate appeals from orders that are not final judgments will sometimes be necessary when they have a final and irreparable effect on the rights of the parties or non-parties. An immediate appeal may be taken, from that small class of orders that finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166-67 (App. 2007).

An accused=s claim that he was previously put in jeopardy and is about to be tried again for the same offense is a collateral order that is immediately appealable because it is a final decision, as is the denial of an accused=s motion for reduction of bail on the ground that it is unconstitutionally excessive. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 & n.2 (App. 2007).

Because reversal on appeal from a conviction following a second trial comes too late to afford an accused protection against being twice put to trial for the same offense, an order denying a motion to dismiss on the ground that the accused had previously been tried for that offense is a final decision and thus appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

When the double jeopardy claim involves protection against multiple punishment, not the protection against being put on trial a second time, the rationale for granting pretrial appeals does not apply. There is no right to an immediate appeal from a double jeopardy claim of multiple punishments because that right can be fully vindicated on an appeal following a final judgment and therefore is not an immediately appealable final decision. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial.

Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The three requirements for an appeal under the collateral order doctrine are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. If an order meets all three of these requirements, it is a final decision and is immediately appealable. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The collateral order doctrine permits appeals before a final decision. The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

The collateral order doctrine does not apply to an interlocutory appeal that involves an issue which would be reviewable on appeal from a final decision and which is not completely separate from the merits of the action but is at the heart of the action=s merits. The appeal will therefore be dismissed since it is not from a final decision and thus not ripe for review. The dismissal will be without prejudice to any future appeal from a final decision. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562-63 (App. 2008).

If a person=s contempt conviction was unsafe, that is, if he should have been acquitted because there was no earlier order requiring his appearance or if he was not allowed to present a defense, or if he had some valid defense that should have resulted in an acquittal on the contempt charge, his remedy would have been an immediate appeal of the contempt conviction as a final collateral order. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 414, 417-18 (App. 2014).

The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

– Decisions Reviewable – Direct Appeals

The appellate division of the Supreme Court of the FSM may accept direct filing of a case and an expedited briefing schedule may be established where there is limited time available and prompt resolution of the issues in the case is decidedly in the national interest. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

When an appeal from an administrative agency decision involves an issue of extreme time sensitivity and of national importance that ultimately would have to be decided by the appellate division the court may allow a direct appeal to the appellate division. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

"Direct" appeals to the appellate division have been limited to entire cases appealed from administrative agencies decisions. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The FSM Supreme Court has in the past permitted direct appeals from administrative decisions to the FSM Supreme Court appellate division. Urusemal v. Capelle, 12 FSM R. 577, 582 (App. 2004).

When no development of a trial record is required since there is no factual dispute and the issue for determination is one of law, when the case is time sensitive because of the effect on pending cases, and when the issue is one of significant national importance since it bears on the fundamental relationship between all three branches of government, the appellate division has subject matter jurisdiction over the matter and may hear the case. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

The appellate division may consider "direct appeals" in cases of national importance and extreme time sensitivity involving the national government. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

When a party=s sole recourse from a Kosrae small claims judgment is to file for a trial de novo in the Kosrae State Court, the party cannot appeal directly to the FSM Supreme Court. The FSM Supreme Court=s only authority over a direct appeal from a Kosrae small claims judgment is to enter an order dismissing the appeal since the court lacks jurisdiction over it because it is not an appeal from the highest state court in which a decision may be had. Simon v. Heirs of Tulenkun, 17 FSM R. 646, 649-50 (App. 2011).

– Decisions Reviewable – Final Decision Defined

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. In re Extradition of Jano, 6 FSM R. 23, 24 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

In civil cases appeals may be taken from all final decisions of the Kosrae State Court. Finality should be given practical rather than technical construction, however, a summary judgment on the issue of liability, is not final or appealable until after the damage issue is resolved. Giving the word "final" its ordinary meaning, a decision that does not entirely dispose of one claim of a complaint containing four cannot be said to be final. Kosrae v. Melander, 6 FSM R. 257, 259 (App. 1993).

Because a decision of a single justice in the appellate division of the Chuuk State Supreme Court may be reviewed by an appellate panel of the same court it is not a final decision of the highest state court in which a decision may be had, which it must be in order for the FSM Supreme Court to hear it on appeal. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

Where summary judgment has been granted on the issue of liability, but the issue of damages is still pending, the right to appeal has not been lost even though 10 months have elapsed because no final judgment has been entered and the deadline for filing an appeal does not begin to run until a final judgment has been entered. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 356 (Pon. 1994).

Civil case appeals to the FSM Supreme Court may be taken from final decisions of the highest state courts in Yap and Pohnpei if the cases require interpretation of the national constitution, national law, or a treaty; and in other cases where appeals from final decisions of the highest state courts are permitted under the Constitution of that state. A final decision is one which leaves nothing open to further dispute and which ends the litigation on the merits leaving the trial court with no alternative but to execute judgment. Damarlane v. United States, 7 FSM R. 202, 203-04 (App. 1995).

A state appellate court opinion in response to questions of state law certified to it by the FSM Supreme Court trial division is not a final decision and therefore not reviewable by the FSM Supreme Court appellate division. Damarlane v. United States, 7 FSM R. 202, 204 (App. 1995).

When a judgment has been entered, executed, and paid into court, the order disbursing the executed funds is a final decision and appealable. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

An order by a single justice of the Chuuk State Supreme Court dismissing an appeal is a final order that may be appealed to the FSM Supreme Court appellate division. Wainit v. Weno, 8 FSM R. 28, 30 (App. 1997).

If, on remand from an appeal to the trial court, all that is left for the administrative agency to do is ministerial, the order of remand is final. If the agency has the power and duty to exercise residual discretion, to take proof, or to make an independent record, its function remains quasi-judicial, and the remand order is not final. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

Ordinarily a judgment of reversal rendered by an intermediate appellate court which remands the cause for further proceeding in conformity with the opinions of the appellate court is not final and therefore, not appealable to the higher appellate court, so long as judicial action in the lower court is required. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

The general rule is that only final judgments can be appealed. There is no appealable final judgment when only liability and not damages decided. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A single appellate justice might not be considered the highest state court when his orders are subject to review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 n.3 (App. 1999).

The FSM Supreme Court does not have jurisdiction to consider an appeal from an order by a Chuuk State Supreme Court single justice denying a motion for a stay or injunction pending appeal because it is not from a final decision. Chipen v. Election Comm=r of Losap, 9 FSM R. 163, 164 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute judgment. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

When a trial court has determined a party=s liability for an attorney=s fees sanction but has not determined the amount of that liability, it is not a final order because the trial court could not execute on the order when the amount of attorney fees had not been fixed. Only once the fees have been fixed will the order become final and appealable. Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

The general rule is that appellate review of a trial court is limited to final orders and judgments. Final orders and judgments are final decisions. Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

When an appeal is from a trial court post-judgment order that does not make any specific order concerning how the judgment is to be satisfied, or what specific funds are to be used to satisfy the judgment, or specify the method that should be used to provide payment to the plaintiff, and that does not make a specific finding about the fastest way for the judgment to be paid, and which, by its terms, extends only for two months when the trial court would then take further action, if necessary, it is not appeal from a final decision and will be dismissed. Chuuk v. Davis, 9 FSM R. 471, 473-74 (App. 2000).

When, on August 12, 1998, the trial court entered a judgment on four claims pursuant to FSM Civil

Rule 54(b) that stated that "there is no just reason for delay," and expressly directed entry of judgment as to the four claims, then that judgment is final and appealable, and the time to appeal began to run as of the date of the entry of the judgment, August 12, 1998. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

An order granting or refusing a transfer of venue is not a final judgment and is not appealable. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

Because of the automatic ten-day stay on the issuance of a writ of execution, a money judgment, upon entry of judgment, is final for the purposes of appeal, even though it is not yet final for the purposes of execution. In re Engichy, 11 FSM R. 520, 528 (Chk. 2003).

When a municipality=s complaint alleged that the defendants damaged its reef, submerged lands, and resources but the trial court concluded that since the state owned the submerged lands and resources, the municipality was precluded from recovering damages for injury to the submerged lands and living marine resources, but if it was able to prove damage to other municipal resources, it would be provided that opportunity at trial; when no other claimed municipal resources were identified by either the court or a party, before or after that decision; and when the municipality stipulated to a final judgment being entered against it, it abandoned any claim that it might have had for damage to resources other than living marine resources; nothing remained for the trial court to adjudicate and the judgment was final and appealable. Kitti Mun. Gov=t v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

In criminal cases, appeals are permitted from all final decisions of the FSM Supreme Court trial division. It is thus a final decision, not a final judgment, that is reviewable under Appellate Rule 4(b). Only the sentence constitutes a final judgment in a criminal case, so a final judgment finding an accused guilty and imposing a sentence is always a final decision. However, a final decision may also be one of those small class of orders referred to as collateral orders. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

A pretrial double jeopardy appeal will be dismissed as not from a final decision when the double jeopardy claim is not based on a claim that the defendants had been previously put in jeopardy. The "collateral order" exception for double jeopardy claims is limited to former jeopardy claims and an appellate court lacks jurisdiction to entertain an immediate pretrial appeal of a trial court denial of a motion to dismiss based on multiple punishment grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 167 (App. 2007).

Denials of motions to dismiss on grounds such as a challenge to the sufficiency of the indictment are not immediately appealable by an accused, even if contained in a motion to dismiss on double jeopardy grounds. An order denying a motion to dismiss a charging document because it is defective is not "collateral" in any sense of that term because it goes to the heart of the issues to be resolved at trial. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

Denial of a defense motion to dismiss ordinarily is not final. Thus, appeals from a denial of a defense motion to dismiss based on challenges to the charging document=s sufficiency or failure to charge an offense or and many other grounds will be dismissed. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Post-judgment orders are generally final decisions from which an appeal may lie and from which a separate notice of appeal must be filed if the judgment itself has been appealed. When no separate notice of appeal from a post-judgment order awarding attorneys= fees has been filed, the appellate court lacks jurisdiction to review the order even though the judgment had been appealed. This general principle is also true of any other post-judgment order for which an appellant seeks review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the July 25, 2007 State Court order denying the appellants= motion for reconsideration ended all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

When the trial court planned to take further post-judgment action, its decision could not be considered final for appeal purposes. But when the trial court states that it will not take any further action unless the appellate division chooses to expand a previous ruling, the trial court=s order is a final decision since it does not contemplate further action by the court, and the appeal will proceed on the merits. Barrett v. Chuuk, 16 FSM R. 229, 233 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

The general rule is that appellate review of a trial court is limited to final orders and judgments because a policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment. Jano v. Fujita, 17 FSM R. 281, 283 (App. 2010).

When the trial court=s order granting an award of attorney=s fees was simply the beginning of a process since the order itself required the movant to submit evidence of the reasonable fees incurred, and when the key fact was that the trial court had not yet fixed on an amount for the attorney=s fees and without fixing the amount, there was nothing for the trial court to execute, the movant=s contention that the appeal was not from a final order is dispositive and the appeal will be dismissed because only once the fees have been fixed will the order become final and appealable. Jano v. Fujita, 17 FSM R. 281, 283 (App. 2010).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since 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 will 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 all the parties= rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358-59 (App. 2011).

Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction ordinarily cannot be final for the purposes of appeal. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011).

When a trial court disposes of a postjudgment motion for writ of garnishment and fully adjudicates the questions of ability to pay and fastest method of payment and when the trial court has not retained for itself the power to review compliance with the order at a specific later date, the trial court=s order is final for the purposes of appeal. Stephen v. Chuuk, 17 FSM R. 453, 460 (App. 2011).

Generally, the appellate division may review only final decisions. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment, and an appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

Dicta is not a final decision that may be subject to appellate review since dicta cannot be used as a basis to require or compel any later action. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The FSM Supreme Court appellate division may, in civil actions, hear appeals from the trial division only from final decisions, interlocutory orders disposing of injunctions, interlocutory orders with respect to receivers, interlocutory decrees determining rights and liabilities of parties in admiralty cases. Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the appealed order did not affect the substantial rights of the parties, and the cause was retained for further action, as evidenced by the subsequent orders, the appealed order was not final as to the issue it resolved, and the appellate court has no jurisdiction to hear the appeal. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

When the Kosrae State Court=s April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court=s July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. An order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 19 FSM R. 416, 418-19 (App. 2014).

In civil actions, the appellate division may take appeals from the trial division only from final decisions, but an order is not final when substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 343-44 (App. 2016).

When there was further trial court activity involving a determination of the specifics of the relevant sanctions requiring further analysis by the lower court, the order appealed from was not a "final decision" and consequently, the appellate court is without jurisdiction to consider the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

An adjudication on liability, without determining damages (the amount of that liability) is not a final judgment and thus not appealable. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When the trial court issued an order awarding attorney=s fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review, because the order appealed from established only the pecuniary responsibility for opposing counsel=s reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court=s order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney=s fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Final orders and judgments are final decisions. Esau v. Penrose, 21 FSM R. 75, 78 (App. 2016).

Dismissal of an action for lack of subject-matter jurisdiction is a final judgment for purposes of appeal. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of the appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

Generally, an order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Setik v. Mendiola, 21 FSM R. 110, 112 (App. 2017).

The appellate court lacks jurisdiction to review an appeal from a trial court order that was not even a final decision on whether the trial court would accept the plaintiffs= opposition to the defendants= pending dismissal motion because that order was not a final decision on anything since it left for the trial court=s future decision not only whether it would accept a future opposition to the pending motion but also whether the pending motion would be granted or denied. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

A final decision generally is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Explained differently, an order is not final when the substantial rights of the parties to the action remain undetermined and when the cause is retained for further action. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 283, 284 (App. 2019).

A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287 (App. 2019).

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute judgment. Final orders and judgments are final decisions. Salomon v. Mendiola, 22 FSM R. 289, 290 (App. 2019).

A final order is a final decision. A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but enforce the final order or execute the judgment. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

An order that Pohnpei seek an earthmoving permit to remove a dredging berm was a final decision because it ended the litigation and did not contemplate further court action other than the enforcement of that order. Berman v. Pohnpei, 22 FSM R. 300, 302 (Pon. 2019).

– Decisions Reviewable – Interlocutory

For an interlocutory appeal, FSM Appellate Rule 5 must be read as requiring a prescribed statement from the trial court. Lonno v. Trust Territory (II), 1 FSM R. 75, 77 (Kos. 1982).

The trial court will not issue a Rule 5(a) prescribed statement for an interlocutory appeal when there is no substantial ground for difference of opinion and that an immediate appeal from the order would retard, rather than materially advance, the ultimate determination of the litigation. Lonno v. Trust Territory (II), 1 FSM R. 75, 78 (Kos. 1982).

Generally only final judgments or orders can be appealed, but the appellate division may, at its discretion, permit an appeal of an interlocutory order. The court, in exercising its discretion should weigh the advantages and disadvantages of an immediate appeal and consider the appellant=s likelihood of success before granting permission. Jano v. King, 5 FSM R. 326, 329 (App. 1992).

Where a court order takes no action concerning an existing injunction and states that it may modify the injunction depending on the happening of certain events, that order does not come within the provision of the rule allowing interlocutory appeals of orders granting, continuing, modifying, or dissolving, or refusing to dissolve or modify an injunction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The right to appeal an interlocutory order which affects an injunction is an exception to the general rule that permits appeals only from final decisions. The exception reflects the importance of prompt action when injunctions are involved since the threat of irreparable harm is a prerequisite to injunctive relief. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 332, 334 (App. 1992).

The general rule is that appellate review of a trial court is limited to final orders and judgments. However, certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division. In exceptional cases, the extraordinary writs of mandamus or of prohibition may be issued to correct a trial court=s decisions before final judgment. Appellate review may also be granted when the trial court has

issued an order pursuant to Appellate Rule 5(a). Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

The appellate division does not have the power to enlarge time to petition for permission for an interlocutory appeal, but the trial division may re-enter its order with a prescribed statement thereby causing a new ten-day period to run because a trial court retains jurisdiction over its interlocutory orders and may reconsider any such order until a final judgment is entered. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

Pursuant to FSM Appellate Rule 4(a)(1)(B) the FSM Supreme Court appellate division has jurisdiction to hear an appeal from an interlocutory order granting a permanent injunction. Stinnett v. Weno, 8 FSM R. 142, 145 n.2 (Chk. 1997).

In order for the appellate division to hear an appeal in the absence of a final judgment there must be some other source of jurisdiction, such as FSM Appellate Rule 4(a)(1)(B) which allows appeals from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

As a general rule in an interlocutory appeal of an injunction an appellate court concerns itself only with the order from which the appeal is taken, and reviews other issues only if they are inextricably bound up with the injunction. Thus an appellate court has jurisdiction to review a summary judgment on the merits when the appellants are subject to a permanent injunction which is inextricably bound up with the underlying summary judgment. Iriarte v. Etscheit, 8 FSM R. 231, 235 (App. 1998).

When no final judgment or decree has been entered an appeal may be taken from the Kosrae State Court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions; or, in a civil proceeding, when a justice has certified that an order not otherwise appealable involves a controlling question of law concerning which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance completion of the action. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

The FSM Supreme Court appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties= rights and liabilities in admiralty cases, and any other civil case in which an appeal is permitted as a matter of law. Permission may also be sought for an interlocutory appeal pursuant to Appellate Rule 5(a). Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000).

Generally discovery orders are interlocutory in character and review may be obtained only through means of the contempt process or through appeal of the final judgment in the underlying action. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 469 (Pon. 2001).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal case before a final decision, and although interlocutory appeals may be made by permission in civil cases, such appeals do not stay trial division proceedings. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM R. 456, 460 (App. 2004).

When there are no monetary Rule 11 sanctions against party=s counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v.

Adams, 12 FSM R. 456, 461 (App. 2004).

Generally, the only interlocutory appeals allowed are those for which permission has been sought and granted, or those from certain orders concerning injunctions, or concerning receivers or receiverships, or from decrees determining parties= rights and liabilities in admiralty cases. FSM Dev. Bank v. Adams, 12 FSM R. 456, 461 (App. 2004).

A defendant may appeal from an interlocutory order denying him bail. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Irrespective of any stipulation of the parties, the court must still determine whether the orders in question are suitable for certification for appeal pursuant to Appellate Rule 5(a). The court may not certify orders by virtue of the fact that the parties have stipulated to a stay. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

When an FSM Supreme Court justice in the trial division, in making in a civil action an order not otherwise appealable under Appellate Rule 4(a), is of the opinion that such order involves a controlling 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, the justice shall so state in writing in such order. The remaining article IX, section 3 FSM Supreme Court justices(s), acting as the appellate division, may permit an appeal to be taken from such order. Amayo v. MJ Co., 13 FSM R. 259, 262 (Pon. 2005).

Certification under Appellate Rule 5(a) requires a prescribed statement from the trial court why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court=s sound discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Permitting the appeal to proceed is at the appellate court=s discretion after the trial court=s discretionary Appellate Rule 5(a) certification. It is only in exceptional circumstances that the trial court should certify an interlocutory order for immediate appeal. In sum, for the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission for the appeal to go forward. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

An order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a) and is thus a nonappealable interlocutory order which is reviewable only upon final judgment or order. Nor is an order granting or denying a motion in limine to exclude testimony appropriate for certification, since it is an interlocutory ruling on evidence. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Under Appellate Rule 5(a), orders cannot be certified for immediate appeal unless they meet the standard set out therein: they must involve a controlling question of law as to which there is substantial ground for difference of opinion such that an immediate appeal from the order may materially advance the ultimate termination of the litigation, and when the orders in question do not meet this standard, the request for certification must be denied. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

Neither the Criminal Procedure nor the Appellate Procedure Rules provide for an appeal in a criminal

case before a final decision, although interlocutory appeals may be made by permission in civil cases. Neither FSM Code, Title 12 (criminal procedure) nor Title 4 (Judiciary Act) authorize interlocutory criminal appeals. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 (App. 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

An accused cannot file interlocutory appeals from orders denying motions to suppress evidence, orders granting or denying discovery, orders denying or granting a transfer or change of venue and denial of motions challenging indictments on various grounds. Zhang Xiaohui v. FSM, 15 FSM R. 162, 168 (App. 2007).

The appellate procedure rules permit certain interlocutory appeals from the FSM Supreme Court trial division, but those rules may not apply to appeals from the Kosrae State Court. In civil cases, appeals may be taken from all final decisions of the Kosrae State Court. Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008).

Although many jurisdictions authorize prosecution appeals when a trial court=s interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division and interlocutory appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

A trial court order that stated that if certain conditions occurred it might modify an injunction was not an appealable order under FSM Appellate Rule 4(a)(1)(B) because further proceedings were needed before it became an order modifying an injunction and thus an appealable order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat=l Police, 19 FSM R. 118, 123 (App. 2013).

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat=l Police, 19 FSM R. 118, 123 (App. 2013).

Since under Kosrae state law a party may appeal from the Kosrae State Court to the appellate court from an interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction, an appeal from a Kosrae State Court order granting a preliminary injunction is thus an appeal to the FSM Supreme Court appellate division that is permitted by Kosrae state law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Since a party in the Kosrae State Court may appeal to the appellate court from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the FSM Supreme Court appellate division has jurisdiction over an appeal of a Kosrae State Court preliminary injunction. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

Normally, a partial summary judgment is not appealable because only final judgments and orders can be appealed. A decision finding liability but not determining the amount of damages is not a final order or judgment and thus usually not appealable. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Since a party in the Kosrae State Court may appeal to the FSM Supreme Court appellate division from an interlocutory order granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify an injunction, the court can exercise jurisdiction on this basis over a partial summary judgment granting an injunction even if there was no final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Absent one of the limited exceptions to the final order or judgment rule found in Appellate Rule 4(a)(1)(B) through (E) applying, the appellate division does not have subject-matter jurisdiction over an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

The FSM appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties= rights and liabilities in admiralty cases and any other civil case in which an appeal is permitted by law. Permission may also be sought for an interlocutory appeal pursuant to Rule 5(a). Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

FSM Appellate Rule 5(a), which provides another vehicle for overcoming the jurisdictional impediment regarding an interlocutory appeal, is unavailable when the required certification from the trial court, setting forth why an interlocutory appeal should be allowed, is not present. Certification under Appellate Rule 5(a) requires the trial court=s prescribed statement why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court=s discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. It is only in exceptional circumstances that the trial court should certify an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

For the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission to go forward. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appeals are not permitted when the appeal is over issues involving steps moving toward a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions, is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy, which dictates against piecemeal appeals from the same civil action. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

An appeal from a trial court order partially dismissing claims is premature when the interlocutory ruling leaves the remaining claims undisturbed. Only when a final decision is entered in the matter, does it ripen, in terms of an action which can properly be appealed. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

While the court would expect that if the grounds for certification of an interlocutory appeal existed, an aggrieved litigant seeking appellate review would move fairly promptly for certification, no rule requires that or sets a time limit for a motion to certify. While prejudice to the non-movants does not, by itself, make the motion untimely, it will be a factor to consider when determining whether a certification would materially advance the litigation=s ultimate termination, and thus whether an order should be certified under Rule 5(a). FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570-71 (Pon. 2016).

If a trial court order is certified, there is then a jurisdictional time limit of ten days within which the party seeking appellate review must file an application with the appellate division requesting permission to

appeal. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 570 n.1 (Pon. 2016).

In order to certify an interlocutory trial court order as one from which a litigant may apply for permission to appeal, the trial court must be of the opinion that such order involves a controlling 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. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

Certification must be denied when an immediate appeal from the interlocutory order would retard, rather than materially advance, the litigation=s ultimate determination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 571 (Pon. 2016).

When an interlocutory order does not contain controlling questions of law over which substantial grounds for exist for a difference of opinion and when an immediate appeal would not materially advance the litigation=s ultimate termination, a motion to certify the order for a possible interlocutory appeal must be denied. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

If an interlocutory order were a collateral order, a trial court certification would not be needed in order to appeal it. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

Whether FSM Development Bank officials can be considered public officers for the purpose of Rule 25(d)(1) is neither a controlling issue of law nor a matter of first impression. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 572 (Pon. 2016).

An order will not be certified when, even if it involved a controlling question of law, there is no substantial ground for a difference of opinion and when an immediate appeal of the issue would only retard, not materially advance this litigation=s ultimate termination. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Factual disputes are not appropriate for Appellate Rule 5(a) certification. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

Since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal, it is thus a nonappealable interlocutory order reviewable only upon final judgment or order. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 574 (Pon. 2016).

If the supposed controlling issue involves facts over which there is a substantial ground for difference, then Appellate Rule 5(a) cannot be used. Rule 5(a) appeals can be maintained only when it is the controlling question of law that is in dispute, not when the dispute is over factual matters. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

The appropriate time to seek appellate review of a Rule 37 expense award would be after final judgment. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

A party may appeal from FSM Supreme Court trial division interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions or the party to an order concerning injunctive relief, or the party may await final judgment (and the entry or denial of a permanent injunction) and appeal the entire matter then. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

In an interlocutory appeal of an injunction, an appellate court will concern itself only with the order from which the appeal is taken, but will review other issues only if they are inextricably bound up with the injunction. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders or partial adjudications will eventually merge. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

The general rule is that only final judgments can be appealed. Thus, in the absence of a final judgment there must be some other source of jurisdiction in order for an appellate court to be able to hear an appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

Appellate Rule 5(a) is a discretionary rule. Under it, the Article XI, ' 3 justices "may permit an appeal" from an interlocutory order if application for permission is made within 10 days of the entry of the interlocutory order. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

Once a trial judge has certified an interlocutory order for appeal, the appellate court may, in its discretion, permit an appeal to be taken from the certified order. The final decision to accept or reject an interlocutory appeal rests within the appellate court=s total discretion. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

While an appellate court may exercise broad discretion in granting permission for interlocutory appeal, it has no discretion to refuse to hear an appeal as a matter of right. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 n.3 (App. 2017).

The appellate division may hear an appeal of an order that the trial court certified for an Appellate Rule 5(a) interlocutory appeal that it could have certified as a Civil Procedure Rule 54(b) final judgment but did not, and it need not convert the appeal to an appeal as of right under Rule 54(b) or remand it to the trial court for certification under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 224 (App. 2017).

A permissive appeal taken under Appellate Rule 5(a) affords appellate jurisdiction over the matter and, in that light, the appellate court should advance its disposition being mindful that practical, not technical, considerations are applicable rather than exalting formalism over substance in order to convert or dismiss the appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

When an appeal was certified under Appellate Procedure Rule 5(a) rather than Civil Procedure Rule 54(b), no appeal as of right is available. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

No good purpose would be served by sending a case back to the trial judge to make a Rule 54(b) certification when the trial judge has already certified the appeal pursuant to Appellate Rule 5(a), especially when the trial judge already had the chance to consider certification under Rule 54(b) and did not do so. This is consistent with the FSM Supreme Court=s policy to preserve judicial economy and its limited resources. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

For the appellate court to *sua sponte* convert a permissive appeal into an appeal by right would effectively usurp the trial court=s discretionary power of certification when it is in the best position to determine whether an appeal is appropriate under the case=s particular set of circumstances. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The Appellate Rule 5(a) requirement that the order be interlocutory, may be met by reason of the very absence of a Civil Rule 54(b) certification. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

Rule 4(a)(1)(D) permitting interlocutory appeals from a trial division order determining the rights and liabilities of the parties in admiralty cases is inapplicable when, even assuming that the plaintiffs effectively pled the matter as an admiralty claim under Civil Rule 9(h), the order appealed from does not determine the rights and liabilities of the parties because it only determined that the court had no jurisdiction over one of multiple defendants. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

The appellate division, in exercising its discretion about whether to permit an Appellate Rule 5(a) appeal in a case that more appropriately would before it under Civil Procedure Rule 54(b), but which the trial court certified under the more restrictive Appellate Rule 5(a), will appropriately (and more importantly it is jurisdictionally sound to) allow the appeal if the requisite factors for a permissive appeal are met. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy which dictates against piecemeal appeals from the same civil action. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

Generally, the only interlocutory appeals allowed are those for which permission has been sought and granted, or those from certain orders concerning injunctions, or concerning receivers or receiverships, or from decrees determining parties= rights and liabilities in admiralty cases. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 (App. 2017).

A trial court=s failure to specify the controlling question(s) of law it had in mind when certifying the case for interlocutory appeal, is one of several factors the appellate division may consider in deciding whether to exercise its discretionary power to review the matter. The power to review, however, is wholly separate from prudence in the exercise of it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228 n.4 (App. 2017).

In deciding whether to entertain an Appellate Rule 5(a) appeal, the appellate court is not bound by the trial court=s belief that the question merits immediate review. Instead, the appellate court is vested with its own broad discretion whether or not to permit the appeal to proceed, and its discretion is so broad that it is difficult to imagine any controlling limit. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 228-29 (App. 2017).

The appellate court, despite its unconstrained freedom of discretion in deciding whether to accept an Appellate Rule 5(a) appeal, should give deference to the opinion of the experienced trial judge who has dealt in depth with the litigation for several years. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 229 (App. 2017).

In exercising its discretion to determine whether to grant or deny leave to appeal, the appellate court

must consider the policy against piecemeal appeals. Thus, permission to appeal should be granted sparingly and with discrimination, and the appellate court should determine whether an appeal would delay rather than advance the case=s ultimate disposition. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 229-30 (App. 2017).

Before the FSM Supreme Court appellate division decides whether or not to exercise its discretion to grant permission for an interlocutory appeal, the court should weigh the advantages and disadvantages of an immediate appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

An immediate appeal=s advantages increase with the probabilities of prompt reversal, the length of the court proceedings saved by reversal of an erroneous ruling, and the substantiality of the burdens imposed on the parties by a wrong ruling. An immediate appeal=s disadvantages increase with the probabilities that lengthy appellate consideration will be required, that the order will be affirmed, that continued court proceedings without appeal might moot the issue, that reversal would not substantially alter the course of court proceedings, and that the parties will not be relieved of any significant burden by reversal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

A petition for permission to appeal an interlocutory order must contain a statement of the facts necessary to an understanding of the controlling question of law determined by the trial court order; 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 litigation=s termination. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

A non-final order may be properly certified for interlocutory appeal when three factors are present – the non-final order 1) involves a controlling question of law, 2) about which there is a substantial ground for difference of opinion, and 3) when an immediate appeal from the order may materially advance the litigation=s ultimate termination. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

The petitioner for certification for an interlocutory appeal bears the burden of showing that exceptional circumstances justify a departure from the basic judicial policy of postponing appellate review until after a final judgment is entered. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 230 (App. 2017).

An appellate court, before deciding whether it should exercise its discretion to grant permission to appeal, must first determine whether the trial court properly found that the requisite Appellate Rule 5(a) factors have been properly met. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

To establish that the interlocutory trial court decision contains a controlling question of law, the petitioner must show that reversal of the court=s order would terminate the action or that the determination of the issue on appeal would otherwise materially affect the litigation=s outcome. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

Generally, an order granting or denying discovery is a non-appealable interlocutory order reviewable only through an appeal of the final judgment since an order denying or granting discovery ordinarily does not present a controlling question of law so as to allow immediate appeal under Appellate Rule 5(a). People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 232 (App. 2017).

When neither the plaintiffs nor the court sought discovery about the court=s personal jurisdiction over

a defendant, that the trial court erred in not allowing the plaintiffs to conduct discovery before considering and granting a motion to dismiss for lack of personal jurisdiction, is not a controlling question of law properly certified for interlocutory review. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

No substantial basis for difference of opinion exists about a defendant=s right to move before trial for dismissal based on lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

Whether a defendant=s conduct amounts to the requisite minimum contacts necessary for the court to exercise personal jurisdiction over it, requires the court to undertake a particularized inquiry about the extent to which the defendant purposefully availed itself of the benefits of FSM laws. This "particularized inquiry" is a necessarily fact-intensive investigation into the alleged facts that constitute the conduct by which the defendant established minimum contacts. Since it would be impossible for the appellate court to determine the trial court=s jurisdiction over a defendant without reference to the trial court record, personal jurisdiction cannot be seen as a "pure" question of law, and because the issue is not a pure question of law, it cannot be properly certified for interlocutory appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234-35 (App. 2017).

When, if the appellate court were to reverse the trial court, it would only serve to prolong, rather than advance, the matter=s termination, the more appropriate procedure is to await the matter=s termination below and, after final judgment, hear an appeal on all issues presented below. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 235 (App. 2017).

Despite the fact that some, or even all, of the requisite factors for properly permitting interlocutory review under Appellate Rule 5(a) are met, the appellate division may otherwise decline to grant a petition for permission to appeal an interlocutory order for other reasons, or no reason at all. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 235 n.7 (App. 2017).

An order may be amended, at any time, to include the prescribed statement and permission to appeal may be sought within 10 day after entry of the order as amended by filing a petition for permission to appeal with the appellate division clerk 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 appeal is being taken. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The parties have ten days from the entry of an appropriate order with the prescribed statement to petition the appellate division for permission to appeal an interlocutory order. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

The appellate division is prohibited from extending the time to petition for permission to pursue an interlocutory appeal, and the trial court cannot extend the time either. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

A trial court can reconsider an interlocutory matter and then re-enter its order with the prescribed statement to start a new ten-day period running in which to petition for permission to appeal. Chuuk v. FSM, 22 FSM R. 85, 95 (Chk. 2018).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 281-82 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and

that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 287-88 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

Appeals are not permitted when the appeal is over issues involving steps moving towards a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions is to combine in one appellate review all stages of the proceeding if and when there is a final judgment or order. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

– Dismissal

The appellant=s tardiness in filing his brief, with no explanation offered in response to a motion for dismissal or when the brief is submitted, constitutes a ground for dismissal of an appeal. FSM App. R. 31(a) & (c). Alaphonso v. FSM, 1 FSM R. 209, 229-30 (App. 1982).

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there is no showing of prejudice. Kephas v. Kosrae, 3 FSM R. 248, 253 (App. 1987).

Unexcused and extended delay in service of appellant=s brief after certification of the record warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM R. 248, 254 (App. 1987).

It is within the court=s discretion to dismiss an appeal where the appellant has failed to file a brief within the time prescribed when the appellee has moved for dismissal. In deciding a motion to dismiss an appeal under FSM Appellate Rule 31(c), the court may consider, among other things, the length of delay in filing briefs; nature of the reason for any filing delay; evidence of prejudice to the opposing party; and extent of the delaying party=s efforts to correct procedural defects. Nakamura v. Bank of Guam (I), 6

FSM R. 224, 227 (App. 1993).

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant=s failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

When an appellant has failed to comply with the appellate rules= timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM R. 264, 265 (App. 1998).

When appellants to the Chuuk State Supreme Court appellate division have made little or no effort to comply with any of the requirements of Appellate Rule 10, their appeals are due to be dismissed. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When, in a three-year old criminal appeal, notice was served requiring appellant=s opening brief to be filed and served by a certain date and the notice further stated that failure to do so would be grounds for dismissal of the appeal, no brief was ever filed and a motion bordering on frivolous was filed for more time, the motion may be denied and the case is remanded to the trial division for additional proceedings, including sentencing, as is provided for by law. Reselap v. Chuuk, 8 FSM R. 584, 586-87 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date for oral argument and for filing appellant=s opening brief, that stated that failure to do so would be grounds for dismissal. Os v. Enlet, 8 FSM R. 587, 588 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellant has not ordered a transcript and no certificate has been filed that no transcript would be ordered and the appellee has filed a written motion to dismiss the appeal for appellant=s failure to comply with the appellate rules. Nechiesom v. Irons, 8 FSM R. 589, 590 (Chk. S. Ct. App. 1998).

An appellee=s oral motion at oral argument to dismiss for appellant=s failure to prosecute the appeal in accordance with the appellate rules may be denied because he has waived any objections by his delay in raising procedural matters until the time set for oral argument and by not complying with the appellate rule concerning motions. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant=s brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants= counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM R. 595, 596 (Chk. S. Ct. App. 1998).

A single justice may dismiss an appeal upon a party=s failure to comply with the appellate rules= time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O=Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O=Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

If an appellant fails to file a brief within the time provided by the rules, or within the time as extended, an appellee may move for dismissal of the appeal. Factors that a court may consider on a motion to dismiss an appeal under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. O=Sonis v. Bank of Guam, 9 FSM R. 356, 361 (App. 2000).

A practicing attorney is expected to know the rules and abide by them. Nevertheless, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect. O=Sonis v. Bank of Guam, 9 FSM R. 356, 361-62 (App. 2000).

The Chuuk State Supreme Court=s authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

An appellant may dismiss his own appeal upon such terms as may be agreed by the parties or fixed by the court. An appellee may not take over and prosecute an opposing party=s appeal because he would be contesting an issue that he had never before challenged. Cholymay v. Chuuk State Election Comm=n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

An appellant must serve and file a brief within 40 days after the date of the appellate clerk=s notice that the record is ready, and if an appellant fails to file a brief within the time frame provided by the rule, or within the time as extended, an appellee may move for the appeal=s dismissal. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

It is within the court=s discretion to dismiss an appeal for late filing of an appellant=s brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Cuipan v. FSM, 10 FSM R. 323, 325 (App. 2001).

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk=s record ready notice. Cuipan v. FSM, 10 FSM R. 323, 326 (App. 2001).

Good cause exists to grant an appellee=s motion to dismiss when the appellant=s failure to comply with the Rules has postponed the final resolution of the case, forestalled the possibility that the defendant would be confined to serve her sentence, and undermined the policy of finality. Cuipan v. FSM, 10 FSM R. 323, 327 (App. 2001).

When an action was filed as an appeal under Kosrae State Code ' 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

When an appellant had no notice of the court=s sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant=s right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Rule 3(a) does not require the dismissal for failure to comply with the procedural rules, but merely

permits it in the proper case. Not every appeal which fails to comply with the time requirements in Rules 10, 11, and 12 must be dismissed because the rules are stated in permissive, rather than mandatory language. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Because an appellate court is not required to dismiss every appeal which does not meet each of the time limitations in the rules, some lesser appropriate action or sanction should be tried first instead of opting for the most extreme sanction of dismissal. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Generally, dismissal of an appeal for failure to comply with procedural rules is not favored, although Rule 3(a) does authorize it in the exercise of sound discretion. That discretion should be sparingly used unless the party who suffers it has had an opportunity to cure the default and failed to do so. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party=s action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Wainit v. Weno, 10 FSM R. 601, 608 (Chk. S. Ct. App. 2002).

When there is no allegation that the law firm=s omissions in the appeal were anything but inadvertent and no evidence that they were made in bad faith, when the defect was cured promptly once the law firm had notice of it, when every indication is that a lesser sanction than dismissal would have assured compliance with Rule 10(b), and when the appellee could not have been misled or prejudiced because the statement of issues had not been timely filed and did not suffer any prejudice because of the default, none of the factors that should have been considered weigh in favor of dismissal. All weigh in favor of a lesser sanction or none at all. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

That appellant=s counsel and the members of his law firm are experienced attorneys and have practiced law long enough in the court is insufficient to dismiss an appeal when the appellant has promptly cured any defects in the appeal, when the default was not willful, when there was no prejudice to the appellee, and when the appellant=s only failure was his untimely filing of the statement of issues and the certificate that a transcript would not be needed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

While practicing counsel are expected to know the rules and abide by them, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When neither Rule 3(a) nor counsel=s conduct in the appeal directs a dismissal, the preference for resolution of matters on the merits should be given effect and dismissal denied. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

If an appeal is one where the issues on appeal involve factual findings and no meaningful review is possible without a transcript, the appellate court is left with no choice but dismissal when the appellant has not provided one. But even then dismissal would likely come only after an appellee=s motion or when the time had come for a court=s decision on the merits. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

Where a single justice abused his discretion when he denied motions to vacate the dismissal and to enlarge time to file Rule 10(b) statements, the appeal will be reinstated and the Rule 10(b) statements considered properly filed. Wainit v. Weno, 10 FSM R. 601, 609 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or

vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

An appellee=s trial court motion to dismiss an appeal on the ground that it is moot must be denied for want of jurisdiction of the trial court to rule upon it. It is a matter for the appellate division to consider, if raised there. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM R. 595, 597 (App. 2003).

Violation of filing a timely notice of appeal requires dismissal of the appeal due to lack of jurisdiction. However, other violations of appellate requirements may be subject to dismissal or other sanctions. Authority to dismiss a case on appeal on procedural grounds is discretionary. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants= failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

If it appears that the court lacks subject matter jurisdiction the case will be dismissed. Failure to file the notice of appeal within the statutory time will result in dismissal of the appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants= late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants= failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal=s dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

An appellate panel cannot dismiss an appeal not assigned to it even though the parties to that appeal have consented to its dismissal. Nikichiw v. O=Sonis, 13 FSM R. 132, 136 (Chk. S. Ct. App. 2005).

A single justice does not have the power to dismiss a cross-appeal when the cross-appellant=s brief allegedly fails to make proper citations to the record as required by the appellate rules; includes extraneous matters; and has an inadequate appendix and which is alleged to be without merit on its face. A single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the timing requirements of the appellate rules, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney=s fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

A single justice may dismiss an appeal for failure to comply with the appellate rules= timing requirements, including the timing requirement to file a notice of appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Alleged deficiencies such as inadequate citations to the record and an inadequate appendix are not grounds upon which a single justice may dismiss an appeal, but such deficiencies, if true, would adversely affect the appellant=s power to persuade the full appellate panel that the trial court erred in the manner in which it claims. Nor will a single justice strike the portions of the brief concerning an issue allegedly not raised below since it is the appellant=s burden to persuade the full appellate panel that the issue was raised below or is properly before the appellate division. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) is the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

When the appellee has suffered no prejudice due to the appellant=s neglect to file an appendix and cite to the record since the appeal relates primarily to legal issues that may be addressed using only the appendix filed by the appellee, the appeal will not be dismissed for the appellant=s negligence. Chuuk v. Davis, 13 FSM R. 178, 183 (App. 2005).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

An election contest appellant=s failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When the ground for the appellee=s motion to dismiss is that the appeal was filed prematurely and this is the same ground, based on essentially the same facts, as the same appellee=s motion to dismiss a different appeal case and that motion was granted and that other appeal dismissed, the appellee=s motion to dismiss this appeal will be granted and this appeal will be dismissed and this appeal will also be dismissed on the ground that it has been abandoned since the appellant indicated orally he intended to dismiss his appeal and then filed no response to the appellee=s motion to dismiss. Asor v. National Election Dir., 13 FSM R. 205, 206 (App. 2005).

Even if an opposition to a motion to dismiss is not filed, the court still needs good grounds before it can grant the motion. Asugar v. Edward, 13 FSM R. 215, 218 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

A single appellate judge=s order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal=s validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot. The FSM Supreme Court lacks jurisdiction to consider cases or issues that are moot, and therefore must dismiss or deny the same. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

The court is reluctant to dismiss an action based on counsel=s behavior. An adjudication on the merits allows the parties to have a reasonable opportunity to present their claims and defenses and is generally preferred over dismissal for procedural reasons. For this reason, dismissal based on counsel=s misconduct is generally avoided. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 495 (Kos. S. Ct. Tr. 2006).

When the appellee filed a motion to dismiss the matter on January 19, 2007 and the appellants were served on January 19, 2007 and chose not to file a response to the motion, the appellants= failure to respond also offers grounds for dismissal. Heirs of Tulenkun v. George, 14 FSM R. 560, 562 (Kos. S. Ct. Tr. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another=s with the result that he would be declared a winning candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm=n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

When an appellant filed its opening brief four years ago; and when the appellees would not stipulate to the record on appeal so the appellant, through its motion on the state of the record, sought relief to move things forward so that the appellees could prepare their briefs, the appellant has tried to prosecute the appeal and its appeal will not be dismissed on that ground. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When an appellee does not contend that the appeal from the trial division to the appellate division was untimely, or is not from a final judgment or order, or that it is a case under the exclusive jurisdiction of the national courts, but only contends that the trial division did not have the jurisdiction to grant the relief the appellant sought, the appellee=s motions to dismiss will be denied because the appellate court sits in review of the trial court decision, and a claim that the trial court does, or does not, have jurisdiction to grant the relief sought is an argument on the appeal=s merits and not a ground to dismiss because the appellate court lacks jurisdiction to review the trial court. The appellees may raise, if appropriate, any of the grounds they cited for dismissal, in their brief(s) on the merits. Enengeitaw Clan v. Shirai, 14 FSM R.

621, 625 (Chk. S. Ct. App. 2007).

Since a denial of a summary judgment motion is not a final order or judgment and since an order of consolidation is not a final order or judgment and when there is no indication that an interlocutory appeal of those orders is one of the few limited exceptions to the final order or judgment rule that are permitted by the Appellate Rules, the appeal will be dismissed. Valentin v. Inek, 15 FSM R. 14, 15 (Chk. S. Ct. App. 2007).

When there is no indication from the record that the trial court decision had been announced before the February 20, 2006 notice of appeal was filed and the decision was not "announced" until the written final judgment was entered on April 10, 2006, the time to appeal that decision (and any interlocutory orders entered in the case before that decision) started running on April 10, 2006. Since no notice of appeal was filed after that date, the appellate court must dismiss the appeal as untimely filed no matter how meritorious the appellant=s claims are since the court lacks jurisdiction. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

A criminal appeal involving a fugitive appellant, who has left the FSM in violation of three court orders, will be dismissed because the fugitive=s ongoing disobedience to those orders precludes him from availing himself of the appellate process. He is thus disentitled to call upon the court for a review of his conviction. Walter v. FSM, 15 FSM R. 130, 132 (App. 2007).

When the opinion and the writ of prohibition issued in a different appeal has already granted the appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

Although briefs must be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text and the cover of the appellant=s brief must be blue; that of the appellee, red; that of an intervenor or amicus curie, green; and that of any reply brief gray, and except by court permission, the parties= principal briefs must not exceed 50 pages, and the reply briefs not exceed 25 pages, when the appellant=s briefs were not all bound in blue because blue paper was unavailable on-island; when, even though that brief used spacing of one and one half, instead of double spacing, it was possible that if the brief had contained the proper double spacing of typed matter it might have resulted in the same amount of text being presented within the 50 page limit; and when the appellee did not raise the issue concerning the color of the coversheet to the appellant=s brief before it submitted its own brief, the appellee=s request to strike the appellant=s brief will be denied. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Although an appeal=s dismissal for failure to comply with procedural rules is not favored, Appellate Procedure Rule 3(a) does authorize dismissal in the exercise of sound discretion. That discretion, however, should be sparingly used unless the party who suffers it has had an opportunity to cure the defect and failed to do so. Moreover, before dismissing an appeal, the court should consider and weigh such factors as whether the defaulting party=s action is willful or merely inadvertent, whether a lesser sanction can bring about compliance and the degree of prejudice the opposing party has suffered because of the defect. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 308 (App. 2007).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Akinaga v. Heirs of Mike, 15 FSM R. 391, 394 (App. 2007).

When the July 25, 2007 State Court order denying the appellants= motion for reconsideration ended

all litigation on the underlying dispute in the Kosrae State Court, it is a final decision that triggered the beginning of the 42-day period for filing a notice of appeal, and when the notice of appeal was not filed within that time, the appeal will be dismissed and the clerk of court will be instructed to strike it from the docket. In re Parcel 79T11, 16 FSM R. 24, 25 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appeal may be dismissed if it fails entirely to cite any error in the trial court=s findings or judgment. Wainit v. FSM, 16 FSM R. 47, 48 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee=s attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel=s name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal=s defects are not of a jurisdictional nature that would require dismissal. Kosrae v. Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence to Appellate Rule 3=s requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant=s intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant=s right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court=s return of service shows that the Kosrae Attorney General=s Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute=s thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party=s failure to comply with the rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss, but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant=s failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant=s due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

It is within a single justice=s power to, upon the justice=s own motion and with adequate notice, dismiss an appeal for an appellant=s failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief is handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. In a civil appeal, when the appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, and failing extraordinary circumstances, it constitutes neglect which will not be excused. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates, either set by the court or rule, or even the ones suggested by the appellants as when their brief would be done, had passed; when this practice is considered evidence of a lack of good faith; and when the appellants do not present any extraordinary circumstances that would warrant excusing their neglect in filing their brief seven months late, the dismissal of their appeal is proper. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114-15 (App. 2008).

The appellate court is not required to just patiently wait until a self-described inexperienced (in appellate matters) counsel has finished a brief and then moved for an enlargement of time so that the court can then be called upon to decide the appeal on its merits. The policy preference for adjudications on the merits (and the case has already been adjudicated on the merits once, by the trial court) does not automatically negate all other considerations or make the procedural rules a nullity. The rules= timing requirements apply to these appellants as they would with any other civil appellant. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 115 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice

may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant=s failure to timely file a brief. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant=s due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice=s power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants= failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129 (App. 2008).

Dismissal for an attorney=s inexcusable neglect in failing to file an opening brief must be handled differently in civil and criminal appeals. Appellate courts are much more reluctant to dismiss a criminal appeal for an attorney=s inexcusable neglect because a criminal defendant has no other remedy. When a civil appeal is dismissed for inexcusable neglect in prosecuting the appeal, if the party whose appeal is thus dismissed is thereby aggrieved, his remedy will be against his attorney. A criminal appellant has no such remedy. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129-30 (App. 2008).

The burden is on the appellant to apply, before his time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 130 (App. 2008).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule, or was even suggested by the appellant as when the brief would be done; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief six months late, the dismissal of his appeal is proper. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 130 (App. 2008).

The appellate court does not have to just patiently wait until a legal services corporation attorney has finished a brief and then moved for an enlargement of time so that the appeal can then be decided on the merits. The policy preference for adjudications on the merits (and when a case is on appeal it has already been adjudicated on the merits once – by the trial court) does not automatically override or negate all other considerations or make the procedural rules a nullity. The Appellate Rules= timing requirements apply to legal services clients with equal vigor as with any other civil appellant. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 131 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants= arguments, a full appellate panel finds the

single justice=s reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The parties to an appeal may, without any court action, voluntarily dismiss the appeal at any time. If the parties sign and file with the appellate division clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and pay whatever fees are due, the clerk must enter the case dismissed, but no mandate or other process will issue without a court order. To be effective, a signed and filed voluntary dismissal must included specific terms about payment of costs. Lewis v. Rudolph, 16 FSM R. 278, 279-80 (Chk. S. Ct. App. 2009).

A dismissal, although signed by counsel for all parties and containing an agreement about settlement terms, which it was not necessary to include to effect the voluntary dismissal, but which did not specify the terms as to payment of costs, would have if it had contained terms as to the payment of costs, been effective to dismiss the appeal without any court action except the clerk=s entry of dismissal. Any settlement terms other than costs included in a stipulated dismissal would not form an order of the court, but would be a private agreement between the parties, which would not have to be included in the notice of voluntary dismissal. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

If an appellant fails to file a brief within the rules= time frames, or within the time as extended, an appeal is subject to dismissal for lack of prosecution. The appellate division, however, has broad discretion upon a showing of good cause, to grant an extension of time to file a brief and appendix. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Generally, an appeal=s dismissal for failure to comply with procedural rules is not favored, and the court=s discretion to dismiss an appeal should be sparingly used unless the appellant has had an opportunity to cure the default and failed to do so. Before dismissing an appeal, a court should therefore consider and weigh such factors as whether the defaulting party=s action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Baelo v. Sipu, 16 FSM R. 288, 292 (Chk. S. Ct. App. 2009).

When a single justice order was a sua sponte motion for counsel to file an opening brief by October 12, 2007, or to show cause why the appeal should not be dismissed and when the court has weighed the appellants= subsequent failure to file a brief without good cause against the clerk=s apparent delay in notifying counsel of the record=s certification and availability, and against the court=s preference to hear an appeal on the merits instead of resolving it on procedural grounds, the court finds that even after the clerk notified the appellants, on March 28, 2008, that the record was available, the appellants had ample time to comply with the filing deadlines and file a brief before the January 20, 2009 hearing, and when counsel did not file a brief within three days of the January 20, 2009 hearing, as he promised, the court concludes that the numerous, unjustified delays in filing a brief without good cause warrant dismissal. Baelo v. Sipu, 16 FSM R. 288, 292-93 (Chk. S. Ct. App. 2009).

An appeal that is not from a final decision will be dismissed for lack of jurisdiction without prejudice to any future appeal from a final decision. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

An appeal will not be dismissed because the appellant filed his statement of issues on Wednesday, April 8, 2009, when, under Appellate Rule 10(b)(3), the deadline for filing the statement of issues would have been April 9, 2009; when a court order shortened it to noon "Wednesday April 7, 2009," but this was a typographical error since April 7, 2009 was a Tuesday and Wednesday was April 8, 2009; and when the movant has not asserted that he was prejudiced by the April 8, as opposed to April 7, filing and

because the court cannot see how he would have been prejudiced by receiving the statement of issues one day later. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 412, 413 (App. 2009).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 412, 413 (App. 2009).

When there is a pattern of not seeking enlargements of time until after filing dates have passed, whether the date was set by the court or by rule; when this practice is considered evidence of a lack of good faith; and when the appellant does not present any extraordinary circumstances that would warrant excusing his neglect in filing his brief late, the dismissal of his appeal is proper. Lewis v. Rudolph, 16 FSM R. 499, 501-02 (Chk. S. Ct. App. 2009).

When the appellants never moved for an enlargement of time to file their brief, either before or after any of several brief-filing deadlines; when the reason given orally for the delay – a problem with the trial division docket entries record – hardly constitutes extraordinary circumstances or even good cause since that document was in the appellate file as an attachment to the clerk=s November 27, 2008 notice and since the court=s January 27, 2009 order was predicated on the certification of the trial division docket and record; and when, considering that land is so important in Chuuk and underlying the appeal there is a land case, it was inexplicable that the appellants were not more diligent in prosecuting this appeal, the appellees= motion to dismiss will be granted. Lewis v. Rudolph, 16 FSM R. 499, 502 (Chk. S. Ct. App. 2009).

When deciding a Rule 31(c) motion to dismiss, the appellate court considers factors including the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. But when an appellant has not served on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review; when there was no excuse for the appellant not knowing that its brief was due August 12, 2009; and when there was no excuse for its seventeen-month delay in requesting an English-language transcript, the appellant=s neglect is inexcusable, and since the appellant=s misleading statement that it had requested an English-language transcript but the Kosrae clerk had not provided it was completely unacceptable, the appeal will be dismissed. Kosrae v. Smith, 16 FSM R. 578, 580 (App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

An appellant=s failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was sufficient to sustain the lower court=s judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party=s failure to comply with the appellate rules= timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants= opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

While a vacated sua sponte dismissal without notice may mean that a later dismissal after notice is more likely to be a further abuse of discretion than a dismissal made on the court=s own motion but only

after notice, it does not automatically follow that every dismissal after a vacated sua sponte dismissal must also be an abuse of discretion. Nevertheless, courts should tread carefully here because, to an impartial observer, the process may by then seem tainted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant=s fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A security bond is not a requirement to perfect an appeal although Appellate Rule 7 permits the trial court appealed from to require a bond for appellate costs if the trial court finds it necessary. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

The absence of a bond to stay the execution of a money judgment while the appeal is pending would not be a ground for dismissal of an appeal. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties= stipulation or on a party=s failure to comply with the appellate rules= timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice=s order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal=s validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

When the appellees seek to have the appeal=s merits decided without the benefit of briefing and argument because the appellees= ground for dismissal is the basis on which the lower court decided the case and which is therefore either the issue or one of the issues that the appellants will raise, brief, and argue on appeal, the court will not permit the appellees to short circuit the appellate process. Once the appellants brief the issue, the appellees must, in due course, be prepared to brief and argue it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

An appellant=s failure to obtain a stay does not affect an appeal=s validity or the appellate court=s jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Allegations that the appellants= counsel have or had a conflict or conflicts are not a ground on which an appeal can be dismissed. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to

dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

A five-year old appeal will be dismissed when the appellant has failed to diligently pursue the matter and has not filed an opening brief and no counsel filed an appearance even though he intends to pursue the appeal through other counsel. The appellees= renewed motions to dismiss are granted unless counsel has entered an appearance on the appellant=s behalf by August 24, 2012 and unless that counsel has filed an opening brief by September 13, 2012, and if these events do not occur, the appeal is automatically dismissed without further order of the court. Kuch v. Mori, 18 FSM R. 337, 339 (Chk. S. Ct. App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When the property was lawfully transferred and this transfer is not a part of what is being appealed because the appellants are appealing the minimum sale price and when the mortgagee does not have title to the land but only a lien, the court will reject the appellants= claim of lack of subject-matter jurisdiction based on the exception for where an interest in land is at issue. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing was not explicitly denied, there was no denial. An explicit notice that a Kosrae Appellate Rule 19 petition had been denied would have put the appellants on notice that they had 42 days to file a new (and effective) notice of appeal. Therefore the FSM Supreme Court=s dismissal of the premature appeal is without prejudice to any future appeal since the rehearing petition is still pending in the Kosrae State Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules= timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R.

604, 608 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)=s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties= stipulation or on a party=s failure to comply with the appellate rules= timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Grounds for dismissal that go to either the merits of the preliminary injunction or the merits of the underlying case are not grounds for dismissal before the parties brief and argue the appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

A contention that the appeal should be dismissed because the appellants filed their brief on November 12, 2013, instead of on the court-ordered November 8, 2013 deadline is frivolous. An appeal=s dismissal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Andrew v. Heirs of Seymour, 19 FSM R. 331, 336-37 (App. 2014).

The burden is on the appellant to apply, before the time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and failing extraordinary circumstances, it constitutes neglect which will not be excused. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Among the factors which the court considers on a motion to dismiss under Rule 31(c) are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and the extent of appellants= efforts in mitigation. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the Rules resulting in prejudice to the opposing party, this policy preference for adjudications on the merits does not negate all other considerations or make the procedural Rules a nullity. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

It is within a single justice=s power to dismiss an appeal upon stipulation of the parties or upon a party=s failure to comply with the Rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

The court will, on the appellees= motion, dismiss an appeal when no opening brief has been filed or an enlargement sought and the court has found the appellants have exhibited severe disregard for the Appellate Procedure Rules= timing requirements and as a result of this, the appellees have been prejudiced. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM R. 251, 253 (App. 2015).

Although Appellate Rule 3(a) authorizes dismissal, courts, in the exercise of sound discretion, should, especially when a failure to comply with procedural rules is in issue, be particularly prudent in issuing such a ruling until the recalcitrant party has had an opportunity to remedy the defects. A lesser sanction is appropriate when the noncompliant party=s conduct is merely inadvertent and undue

prejudice does not redound to the opposing party. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 314 (App. 2016).

A motion to dismiss the appeal because of deficiencies in the appellants= appendix will be denied and the appellants instructed to confer with the appellee about the contents of the appendix and record as a whole, and include the appropriate citations to the latter within the appellants= "amended" brief. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 311, 315 (App. 2016).

A single justice may dismiss an appeal for an appellant=s failure to comply with the timing requirements for filing a notice of appeal that are set forth within the Appellate Rules. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

When, given the absence of a timely filed appeal from a final decision, the appellate court has no jurisdiction, the appellee=s motion to dismiss the appeal will be granted, thereby rendering moot all other motions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 346 (App. 2016).

The threshold determination of subject-matter jurisdiction may be raised at any time by a party or by the court. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

When the appellants have failed to adhere to the timeline set forth in Appellate Rule 31(a), the appeal is subject to dismissal pursuant to Appellate Rule 31(c) because it is within the court=s discretion to dismiss an appeal for late filing of an appellant=s brief. Among the factors which the court considers on a Rule 31(c) motion to dismiss are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reasons for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

Dismissal at the appellate level is undoubtedly a harsh sanction and the court should exercise its discretion to dismiss under Appellate Rule 3(a) sparingly. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

Continued unfettered use of Appellate Rule 26(b) to enlarge time because of counsel=s inability to find time to prepare a brief could quickly rise to a level of abuse causing undue delay, thus subjecting the appeal to dismissal. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 389 (App. 2016).

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Among the factors which the court considers on a Rule 31(c) motion to dismiss an appeal are the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant=s failure to file on time; and extent of appellant=s efforts in mitigation. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

Although dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party, this policy preference for adjudication on the merits does not negate all other considerations or make the procedural rules a nullity. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

When the appellants have had ample time within which to file their brief after the court=s February 18th order, much less engage in a dialogue with opposing counsel about what parts of the trial transcript need to be reproduced and made a part of the record and when the September 27th due date for filing a response to the appellee=s motion to dismiss has expired and no enlargement was sought by the appellants, the appellee has been prejudiced by the resultant inordinate delay and the appeal may be

dismissed by a single justice for failure to comply with the Appellate Rules= timing requirements. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

An appellant must file and serve a brief within 40 days after the date of the court clerk=s notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellee may move for the appeal=s dismissal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

An appellate court may dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, and, when an appellee has so moved. The factors that the court may consider are: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant=s failure to file on time; and the extent of appellant=s efforts in mitigation. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3-4 (App. 2016).

An appellate court will, on an appellee=s motion, dismiss an appeal when no opening brief has been filed and the appellants have severely disregarded the Appellate Procedure Rules= timing requirements and the appellee has been prejudiced as a result. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

The appellants= tardiness in filing their brief, with no explanation offered in response to a motion for dismissal, constitutes a ground for dismissal of an appeal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

An appeal will be dismissed when the filing of the appellants= brief has been delayed over two years with no likely expectation of an imminent filing or indication that an opening brief will ever be filed; when the prejudice to the appellee is the further difficulty, expense, and delay in having its money judgment satisfied; when, earlier, the appellants= grounds for seeking an enlargement of time to file their brief were a pending Rule 60(b) motion and a pending or expected payment to reduce the judgment amount, neither of which are relevant now because the Rule 60(b) motion was denied well over a year ago and the loan principal credit occurred before then; when the appellants have thus had, even though no enlargement of time or stay was granted, more than ample time to complete an opening brief, but have not done so and no reasons have been given for this excessive delay; and when the appellants have made no attempt to mitigate. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

It is within a single justice=s power to dismiss, on motion, an appeal because of the appellants= failure to comply with the Appellate Rules= timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Once an interlocutory order has merged into a final decision or judgment, it may, if that final decision or judgment is appealed, come before the appellate court for review in that appeal and at that time. The appellate court has no jurisdiction to review it in an earlier appeal and will dismiss such an appeal. Setik v. Mendiola, 21 FSM R. 110, 113 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and it is then properly dismissed. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

If the appellants failed to file a timely notice of appeal with the court appealed from pursuant to FSM Appellate Rules 3 and 4(a)(1), then the FSM Supreme Court appellate division lacks jurisdiction to hear the matter and must dismiss it. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

When the appellants have been given reasonable notice of the appeal=s possible dismissal, and

have failed to take further action, they are deemed to have abandoned their appeal, and their appeal will be dismissed. Serment v. Antonio, 21 FSM R. 251, 254 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, an appellate court lacks jurisdiction over the appeal and it is then properly dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

If the appellant fails to timely file a notice of appeal with the court appealed from, then the appellate court will lack jurisdiction to hear the matter, in which case it must be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

When the appellant has been given reasonable notice of his appeal=s possible dismissal and has failed to take further action or comply with the court=s order, he is deemed to have abandoned his appeal. It will therefore be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal and it is then properly dismissed. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

Generally, an appeal should not be dismissed because the person filing the notice of appeal was misled or misinformed by the court staff. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335 (Chk. S. Ct. App. 2017).

Since an appeal=s dismissal for failure to comply with procedural rules is generally not favored, the court=s discretion to dismiss an appeal must be sparingly used unless the appellant has had an opportunity to cure the default and has failed to do so. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335 (Chk. S. Ct. App. 2017).

When an appellant=s timely-filed notice of appeal was accepted and filed by a clerk who failed to tell the filer that a $25 fee had to accompany the notice and when the appellant promptly paid the fee and filed a new notice of appeal once it was informed that a $25 filing fee was due and that was unpaid, the appeal=s dismissal will be denied even though the fee was paid after the time to appeal had expired. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 21 FSM R. 334, 335-36 (Chk. S. Ct. App. 2017).

An appellant must timely file a request for a transcript or a statement of the issues, a designation of the appendix, and an opening brief with an appendix. An appellant=s failure to comply with these rules may subject its appeal to dismissal. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

Although Appellate Rule 3(a) does authorize dismissal in the court=s exercise of sound discretion, an appeal=s dismissal for failure to comply with procedural rules is generally not favored. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343 (App. 2017).

The court=s discretion to dismiss an appeal should be sparingly used unless the party who suffers it has had an opportunity to cure the defect and failed to do so. Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party=s action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the defect. Carl v. FSM Dev. Bank, 21 FSM R. 342, 343-44 (App. 2017).

When, at an appeal=s early stage, any prejudice to the appellees from the failure to either file a statement of issues or to order a full transcript is minor; when the appellants have not yet been given an opportunity to cure their defective performance; and since the court is generally quite reluctant to dismiss an appeal for failure to comply with the procedural rules when that failure may be the result of mere inadvertence, the appeal will not be dismissed until the appellants have been be given an opportunity to cure their defective performance by either filing and serving their statement of issues on appeal or by

ordering a full transcript of the hearing(s) out of which the order appealed from arose. Carl v. FSM Dev. Bank, 21 FSM R. 342, 344 (App. 2017).

A justiciable controversy may become moot subsequent to filing an appeal if certain events cause the parties to lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, and, if an appellate court dismisses a case as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Selifis v. Robert, 21 FSM R. 352, 353-54 (Chk. S. Ct. App. 2017).

An appeal concerning a municipal election will not be dismissed as a moot or non-justiciable controversy when that municipality currently has two mayors that have been elected pursuant to two separate elections, which may be due to errors made in the trial division. Selifis v. Robert, 21 FSM R. 352, 354 (Chk. S. Ct. App. 2017).

An appellate court will normally dismiss an appeal for lack of jurisdiction when it is not from a final order because, although sanctions liability had been determined, the amount of those sanctions had not, but when a later appeal was from a final order (since it fixed the sanction amount) into which the earlier liability order merged, it did not matter whether the first appeal case was dismissed or consolidated with the later appeal case. Setik v. Mendiola, 21 FSM R. 537, 560 n.4 (App. 2018).

When the court lacks jurisdiction to hear an appeal, it will be dismissed. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Although a single Chuuk State Supreme Court appellate division justice cannot dismiss or otherwise determine an appeal or other appellate proceeding, a single justice can deny a motion to dismiss, subject to review by the full panel. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

When an appellant has ordered the entire transcript and has thus discharged its duty as an appellant, the alternative methods of creating a trial court record are unneeded or unusable, and there is no basis to dismiss the appeal for the appellant=s alleged failure to perform its duty. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41-42 (Chk. S. Ct. App. 2018).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant=s claims are. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

An appeal will be dismissed when a review of the record shows that none of the issues the appellants raised were ever considered in the trial division, when the order of sale appealed from was never executed, and when the appellants concur that if the appellee no longer pursues the order of sale the matter should proceed in the trial division. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 81 (App. 2018).

An appeal will be dismissed if events after its filing make the issues presented moot because the court lacks jurisdiction to consider moot cases. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

An appellate court may receive proof of, or take notice of, facts outside the record to determine if an appeal has become moot. In most cases, it would be difficult to determine mootness any other way. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

All the appellants= substantive claims are moot and will be dismissed when those claims no longer present a justiciable dispute because previous appellate decisions have resolved them in their entirety. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Although the usual result when an appeal becomes moot is for the appellate court to vacate the judgment below and order that the case be dismissed, when the case below has already been dismissed, no purpose would be served by vacating that dismissal and then dismissing it again. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 280, 282 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 283, 285 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. FSM Dev. Bank, 22 FSM R. 286, 288 (App. 2019).

When the trial court=s order appealed from was not a final order or judgment, the appeal from that order will be dismissed for lack of jurisdiction to hear the appeal as judicial economy dictates against piecemeal appeals and that the case below should be permitted to proceed to final judgment. Salomon v. Mendiola, 22 FSM R. 289, 291 (App. 2019).

The appellate court will grant the appellees= motion to dismiss the appeal when the deadline for the appellants to file an opening brief and appendix expired over a year ago. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

When deciding whether to dismiss an appeal because the appellant has failed to file an opening brief within the time prescribed and the appellee has moved for dismissal, an appellate court may consider: the length of delay in filing the brief; evidence of prejudice to the appellee; the nature of the reason(s) for the appellant=s failure to file on time; and the extent of appellant=s efforts in mitigation. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

The appellants= tardiness in filing their brief, with no explanation offered in response to a motion for dismissal, constitutes a ground for dismissal of an appeal. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

A single justice may dismiss an appeal for failure to comply with the appellate rules= timing requirements. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

When the only reason the appellants advance for their failure to obtain counsel is that it will take time to find one; when the court has granted a number of continuances to accommodate the appellants, but the appellants have not obtained counsel or set a definite timeline for obtaining counsel, an appeal will be dismissed because the appellants have abandoned their appeal since they have failed to file a notice of appearance by counsel on their behalf and failed to file an opening brief and appendix. Estate of Gallen v. Governor, 22 FSM R. 539, 541 (App. 2020).

– Frivolous Appeals

If the appellate court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

Appellees intending to ask for Rule 38 costs and damages because the appeal is frivolous must, although the rule does not require a motion filed separately from the brief, give the appellant more notice than first raising the issue at the end of appellees= oral argument. Phillip v. Moses, 10 FSM R. 540, 546-47 (Chk. S. Ct. App. 2002).

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant=s arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

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

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

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

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

In all cases in which an appellee seeks Rule 38 damages, an appellee shall file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee=s motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney=s fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant=s arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

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

When a petition was not wholly without merit or groundless, or when the petition was not frivolous

since the issues raised had not previously been ruled upon when they were raised in the petition and when there was also some question raised as to how appellate review of the issues could be sought, whether by writ of mandamus or by an interlocutory appeal, the petition is not frivolous and Rule 38 damages will not be awarded. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney=s fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 453 (App. 2004).

If the Supreme Court appellate division determines that an appeal is frivolous, it may award just damages and single or double costs, including attorney=s fees, to the appellee. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

Determining whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462-63 (App. 2004).

An appeal is frivolous when the result is obvious, or when the appellant=s arguments are wholly without merit or groundless, or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

When an action was filed based upon the application or good faith argument for the extension of the Berman rule and upon the contention that the collateral order doctrine allowed an interlocutory appeal; when no previous decisions had specifically dealt with the application or limits of the collateral order doctrine and related issues; and when there was also some question raised as to how a party should seek appellate review of the issues (by writ of mandamus or by an interlocutory appeal), the appeal was not wholly without merit or groundless, or frivolous and no Rule 38 attorney=s fees will be granted. FSM Dev. Bank v. Adams, 12 FSM R. 456, 463 (App. 2004).

If the appellees seek damages under Appellate Rule 38, its inclusion in a preliminary motion to dismiss is improper because the determination of whether to award Rule 38 damages is a two step process – first, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

In all cases in which an appellee seeks Rule 38 damages, an appellee must file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee=s motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

– In Forma Pauperis

An appellant who desired to proceed on an appeal in forma pauperis but failed to file an affidavit showing his inability to pay and who failed to bring his in forma pauperis motion to the attention of the trial division, is deemed to have abandoned his request or at least waived any right he may have had to proceed in forma pauperis. Reselap v. Chuuk, 8 FSM R. 584, 585-86 (Chk. S. Ct. App. 1998).

Generally, only natural persons may proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

In order to proceed in forma pauperis on appeal, an appellant must file a motion in the court appealed from together with an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517 (Pon. 2002).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant=s inability to pay fees and costs or to give security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 517-18 (Pon. 2002).

For an indigent litigant to proceed on appeal in forma pauperis, the appeal must be made in good faith and not be frivolous. The two requirements are related. "Good faith" is demonstrated when a party seeks appellate review of any issue "not frivolous." For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous. Probable success on the merits need not be shown. The court only examines whether the appeal involves legal points arguable on their merits (and therefore not frivolous). The existence of any nonfrivolous or colorable issue on appeal requires the court to grant the motion to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Raising nonfrivolous issues on appeal entitles an indigent to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant=s attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

If the court appealed from grants the motion to proceed in forma pauperis, the party may proceed without further application to the FSM Supreme Court appellate division and without prepayment of fees and costs in either court or giving security therefor, except when the Public Defender Office or Micronesian Legal Services Corporation represents an indigent party the transcript fee is reduced to $1.25 per page, to be paid by the public agency, and not by the party personally. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

Being allowed to proceed in forma pauperis only relieves an appellant from prepayment of fees and costs, not from ultimate liability for those costs. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

It is a matter to be resolved between the court reporters and the judicial branch whether the judiciary pays the costs for in forma pauperis litigants= transcripts. An in forma pauperis litigant is not required to prepay transcript costs, although if the in forma pauperis litigant is represented by the Public Defender or Micronesian Legal Services Corporation then that agency must prepay $1.25 per page. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant is not required to tender payment in order to receive the transcript he has ordered. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant may be allowed to proceed on the original record without the necessity to reproduce any part of it. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

A general court order that provides that when an indigent party is represented by the Office of the

Public Defender in *in forma pauperis* proceedings, the transcript fee will be reduced to $1.25 per page (payable by the public agency and not by the defendant personally) has no effect on Appellate Procedure Rule 24(a). It merely establishes a reduced transcript fee to be paid by the Office of the Public Defender when it represents an indigent party. It does not automatically classify every client of that office as an indigent party. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

In order to proceed in forma pauperis on appeal, an appellant must file an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

To show that a party is indigent the affidavit of a person seeking *in forma pauperis* status must contain more detail than a mere recitation that the affiant is poor and cannot pay. The affidavit should, at minimum, outline the affiant=s income, necessary expenditures and liabilities, savings, the value of any real or personal property the affiant owns individually, and the value of the affiant=s ownership interest in any real or personal property in which the affiant shares ownership with others. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

When seeking *in forma pauperis* status, a party=s affidavit, besides containing a financial statement, must also contain the party=s belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. This is because for a litigant to proceed on appeal in forma pauperis, not only must the litigant be economically eligible, the appeal must be made in good faith and not be frivolous. For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. FSM v. Moses, 12 FSM R. 619, 621 (Chk. 2004).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

The court would be leery of awarding in forma pauperis status to someone who is paying private counsel. Ned v. Kosrae, 20 FSM R. 147, 157 (App. 2015).

– Mandate

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

The trial court=s power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal=s pendency, until the appellate division=s mandate issues. The trial court=s power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

– Motions

That fee arrangements had not been made is not good cause in support of a motion to enlarge time for filing appellee=s brief when the motion is filed well after the brief was due and after oral argument was held. Paul v. Celestine, 3 FSM R. 572, 574 (App. 1988).

The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM R. 344, 345 (App. 1990).

A motion to strike a single appellate justice=s dismissal of an appeal may be set for oral argument and determination by an appellate panel. David v. Uman Election Comm=r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A motion filed pro se in the appellate division can be denied on the basis that it was filed pro se without leave of court. In the appellate court, unlike the trial court, a party does not have an automatic right to appear pro se and must seek permission. Wiliander v. National Election Dir., 13 FSM R. 199, 204 n.4 (App. 2005).

A motion may be denied as moot when the court has already dismissed the appeal. Asugar v. Edward, 13 FSM R. 221, 222 (App. 2005).

A single Supreme Court appellate division article XI, section 3 justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, although a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party=s failure to comply with the appellate rules= timing requirements. A single justice=s action may be reviewed by the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Appellate Rule 27(c)=s use of the word "may" indicates that the review by the full appellate panel of all single justice orders is not mandatory. The word "may" instead of "shall" indicates some discretion. It does not, however, indicate that the discretion lies with the court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 11 (App. 2006).

Rule 27(c) generally restricts a single justice to issuing procedural orders and (with two exceptions) from dismissing appeals. Any action that a single justice takes can be reviewed by the court, on motion by the aggrieved party. Even when the Appellate Rules authorize single appellate judges to entertain requests for relief, the single appellate judge=s decisions remain subject to correction by the appellate court. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

A single appellate judge=s order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal=s validity. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The discretion indicated by the word "may" in Rule 27(c) lies primarily with the parties and makes it mandatory for the full appellate panel to review a single justice order when an aggrieved party asks it to. It is not mandatory that the full appellate panel review every order made by the single justice. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12 (App. 2006).

The full panel=s review of a single appellate judge=s order can be on the papers and the decision announced beforehand either in writing or orally at the start of oral argument on the merits; or the panel can chose to permit the parties a short time to argue and then take a short recess and then announce its decision and then proceed to the main argument on the merits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 12

(App. 2006).

Motions may be decided without oral argument. Even an appeal=s merits may be submitted on the briefs and decided without oral argument if the parties agree. Christian v. Urusemal, 14 FSM R. 291, 293 (App. 2006).

The time period for opposing a motion is seven days. But if service of the motion is made by mail, six additional days are added to the response period. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 361 n.2 (App. 2007).

The appellate court, for good cause shown, may, upon motion, enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time. This differs significantly from the provisions found in the Civil and Criminal Procedure Rules, both of which require a party wishing to enlarge the time period for undertaking an act once the original time period for undertaking the act has expired to demonstrate that the failure to act within initially prescribed time period was the result of excusable neglect. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 362 (App. 2007).

A party may file a response in opposition to a motion within 7 days after service of the motion, so if the motion is served on that party by mail, the party has six added days to file and serve a response. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

The action of a single justice may be reviewed by a full panel of the appellate division. In re Parcel 79T11, 16 FSM R. 24, 26 (App. 2008).

Motions may be decided without oral argument. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The good cause standard is a broader and more liberal standard than excusable neglect standard. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 n.5 (App. 2008).

A single Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate procedure rules may properly be sought by motion. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

A single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion. But "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice=s power. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 109 (App. 2008).

Motions may be decided without oral argument. Where argument would not be helpful to the decisional process, it will not be required on a dismissal issue when the appellants have had, and have taken, their opportunity to be heard by filing written submissions. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 111 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon a party=s failure to comply with the rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief or a statement of issues on appeal and a designation of the record and the failure to file a notice of appeal within the time prescribed by Rule 4. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112 (App. 2008).

If an appellant fails to file a brief within the time provided by Rule 31, or within the time as extended, an appellee may move for dismissal of the appeal. Rule 31(c) permits an appellee to move to dismiss,

but it does not require appellees to do so because they are not required to do anything. Since a court, even an appellate court, has the right to control its own docket, Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant=s failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008).

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant=s due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

It is within a single justice=s power to, upon the justice=s own motion and with adequate notice, dismiss an appeal for an appellant=s failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

The good cause standard is a broader and more liberal standard than the excusable neglect standard. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 124 n.5 (App. 2008).

A single justice of the Supreme Court appellate division may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 125 (App. 2008).

It is the appellate division, not a single justice, that imposes disciplinary sanctions under Rule 46(c), which may include suspension or disbarment. While a single justice may entertain and grant or deny any request for relief which under the appellate rules may properly be sought by motion, "appropriate disciplinary action" is not "relief" that can be properly sought by motion and is thus not within a single justice=s power. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 125 (App. 2008).

Motions may be decided without oral argument. When it does not appear that argument would help the decisional process, oral argument is not required on a dismissal issue, when the appellant has had, and has taken, his opportunity to be heard by filing written submissions. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 127 (App. 2008).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, but a single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the rules= timing requirements. The phrase "timing requirements of these rules" has been interpreted to include an appellant=s failure to file an opening brief or a statement of issues on appeal and a designation of the record, and the failure to file a notice of appeal within the time prescribed by Appellate Rule 4. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128 (App. 2008).

If an appellant fails to file a brief within the time set by rule, or within the time as extended, an appellee may move for dismissal of the appeal. But Rule 31(c) does not require an appellee to do so. Rule 31(c) also does not prevent an appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant=s failure to timely file a brief. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 128 (App. 2008).

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant=s due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v.

Tafunsak Mun. Gov=t, 16 FSM R. 116, 128-29 (App. 2008).

It is within the single justice=s power to move *sua sponte*, with notice, for, and to dismiss appeals for the appellants= failure to timely file opening briefs. Like any single justice order, an aggrieved party may apply for review of the dismissal order by a full appellate panel, which then must consider it. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129 (App. 2008).

A full panel=s review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129 (App. 2008).

When the appellants have sought review of a single justice order of dismissal and when, after review of the record and careful consideration of the appellants= arguments, a full appellate panel finds the single justice=s reasoning to be factually accurate and legally sound, it will affirm the single justice order of dismissal. In re Parcel 79T11, 16 FSM R. 174, 174 (App. 2008).

The court may raise sua sponte whether an appeal may be dismissed for lack of prosecution, and there is no due process violation when a court orders dismissal upon its own motion so long as the appellant has had notice and an opportunity to be heard on the motion. Baelo v. Sipu, 16 FSM R. 288, 291 (Chk. S. Ct. App. 2009).

Motions may be decided without oral argument. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A "Report" that asks for relief, is a motion because any request or application made to the court for relief can only be considered a motion. Since all papers, including motions, must be served on the other parties, when there was no indication that this "Report" had been served on the other parties, the court can disregard it as not properly before the court. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 (Chk. S. Ct. App. 2009).

No one should ever presume that any court will reflexively or automatically grant a continuance whenever a motion is filed seeking one. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 552 (Chk. S. Ct. App. 2009).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM R. 97, 98 (App. 2010).

With certain limitations, a single justice may entertain and may grant or deny any request for relief which under the rules may properly be sought by motion, and a motion for enlargement of time properly falls within such request for relief. Berman v. Pohnpei, 17 FSM R. 251, 252 (App. 2010).

Rule 26(c) does not apply to an appellant=s opening brief since the prescribed period for the brief=s filing is triggered by the date of notice that the record is ready, and not by service of that notice. Thus, no future argument that Rule 26(c) is applicable to an appellant=s opening brief will satisfy as "good cause shown" within the meaning of a Rule 26(b) motion for the enlargement of time. Berman v. Pohnpei, 17 FSM R. 251, 253 (App. 2010).

Since a single justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, a motion to strike the appellant=s appendix or require the submission of translation properly falls within such request for relief. Setik v. Ruben, 17 FSM R. 301, 302 (App. 2010).

The appellants= motion to exclude evidence not submitted in the trial court is moot when the appellate court did not rely on that evidence in reaching its decision. Stephen v. Chuuk, 17 FSM R. 453, 457 (App. 2011).

Motions, even motions to dismiss an appeal, may be decided without oral argument. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party=s failure to comply with the appellate rules= timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

Motions for enlargement of time to file briefs are timely because they are filed before the briefs are due when they are filed on the same day the briefs were due. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

An early enlargement motion can be useful in showing good faith, and a motion two or three days beforehand may be most helpful if it can provide an accurate estimate of the time needed. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

"Good cause" is a legally sufficient reason. It is the burden placed on the litigant, usually by court rule or order, to show why a request should be granted. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

While merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time (although when other factors are also present, the neglect may be excusable), the "good cause" standard is a broader and more liberal standard than "excusable neglect." Since the "good cause" standard frees courts from some of the restraints imposed by the excusable neglect requirement, there thus would be times when being a busy lawyer would satisfy the good cause standard where it obviously could not satisfy the higher excusable neglect standard. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

The court=s discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

Even if counsel were unaware of an unpublished decision announcing that in the future enlargements would not be granted without good cause, Kosrae Appellate Rule 9(b) is clear on its face that enlargement is not automatic and will be granted only for good cause shown. Thus, he cannot claim ignorance of the appellate rule and of its requirement to show good cause. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants= enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court=s discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would

militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

An opposition to a motion to enlarge that is not entitled as a motion to dismiss but which specifically asks the court to dismiss the appeal is a motion to dismiss because a thing is what it is regardless of what someone calls it. Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011).

A single FSM Supreme Court appellate division justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion except that a single justice may not dismiss or otherwise determine an appeal other than on all the parties= stipulation or on a party=s failure to comply with the appellate rules= timing requirements. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single justice may deny a motion to dismiss an appeal. A single justice=s order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal=s validity, and it remains subject to correction by the full appellate panel. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209 (App. 2012).

A single appellate justice does not have the authority to sanction attorneys. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

The appellate division may decide motions without oral argument. Berman v. Pohnpei, 18 FSM R. 418, 420 n.1 (App. 2012).

Motions may be decided without oral argument. Kuch v. Mori, 18 FSM R. 442, 443 (Chk. S. Ct. App. 2012).

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties= stipulation or on a party=s failure to comply with the appellate rules= timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Appellate Rule 26(b) grants the appellate division broad discretion to grant an extension of time upon a showing of good cause, but enlargement is not automatic and will be granted only for good cause shown. "Good cause" is a legally sufficient reason or the burden placed on a litigant, usually by court rule or order, to show why a request should be granted or an action excused. In making its inquiry into a movant=s good cause, the court=s primary consideration should be the diligence of the party seeking the enlargement. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 387 (App. 2016).

There are times when being a busy lawyer would satisfy the good cause standard. The court=s discretion lies in determining whether the busy lawyer (since all lawyers claim to be busy) was busy enough to be considered good cause. Christopher Corp. v. FSM Dev. Bank, 20 FSM R. 384, 388 (App. 2016).

When a motion is served on opposing counsel by mail, the seven days allowed for responses to motions is enlarged by six more days. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

When a motion for costs and attorney=s fees contains no supporting grounds for this request in the motion=s text, the motion will be denied without prejudice to any claim for costs taxable under Appellate

Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

The burden is on the appellant to apply, before his or her time allowance has run, for additional time upon a showing of real need which will not unduly prejudice the appellee. Until such application for extended time is made so that it may be considered before the allotted time has expired, it is evidence of a lack of good faith and, failing extraordinary circumstances, it constitutes neglect which will not be excused. Central Micronesia Commc=ns, Inc. v. FSM Telecomm. Corp., 20 FSM R. 649, 651 (App. 2016).

The appellants= motions for enlargement are no longer material or relevant when the appellants did not file an opening brief within the time periods for which enlargements were sought and have neither filed a brief nor sought a further enlargement since then. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016).

It is within a single justice=s power to dismiss, on motion, an appeal because of the appellants= failure to comply with the Appellate Rules= timing requirements to file an opening brief, but when a long time has elapsed since the motion was filed, it may be better that a full appellate panel consider a motion to dismiss. Walter v. FSM Dev. Bank, 21 FSM R. 1, 4 (App. 2016).

Generally, an appellate court has broad discretion to grant an enlargement of time upon a showing of good cause, but enlargement is not automatic. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

The Pohnpei appellate division=s failure to rule on a motion to enlarge time by four days is a failure to exercise discretion (to grant or deny a motion), and is itself an abuse of discretion. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

Although a single Chuuk State Supreme Court appellate division justice cannot dismiss or otherwise determine an appeal or other appellate proceeding, a single justice can deny a motion to dismiss, subject to review by the full panel. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 41 (Chk. S. Ct. App. 2018).

In the Pohnpei Supreme Court appellate division, oral argument will not be heard on any motion unless the court specifically assigns it thereof. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Under Appellate Rule 27(a), any party may file an opposition to a motion within 7 days after the motion=s service, and, if the motion is served by mail, six days must be added to this prescribed period. Setik v. Perman, 22 FSM R. 105, 111 n.1 (App. 2018).

An appellate court may, despite the non-movants= neglectful tardiness, grant an oral request for a chance to respond since the court may extend the time for responding to any motion. Setik v. Perman, 22 FSM R. 105, 111 n.1 (App. 2018).

– Notice of Appeal

Under the FSM Appellate Rule 4(a)(1), a notice of appeal must be filed within 42 days after entry of the judgment. Kimoul v. FSM, 4 FSM R. 344, 346 (App. 1990).

The proper procedure, in accordance with Kosrae State law and the FSM appellate rules, in filing a notice of appeal from a decision of the Kosrae State Court is to file notice in both Kosrae State Court and the FSM Supreme Court, either with the trial division in Kosrae or directly with the appellate division. Tafunsak v. Kosrae, 6 FSM R. 467, 468 (App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court.

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

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant=s failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM R. 193, 194 (App. 1995).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. The trial court is then divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it. Walter v. Meippen, 7 FSM R. 515, 517 (Chk. 1996).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a trial court may retain jurisdiction over the issue of attorneys= fees even though an appeal is pending on the merits of the case. Damarlane v. United States, 8 FSM R. 14, 16 (App. 1997).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

Appeals to the FSM Supreme Court appellate division from Chuuk State Supreme Court appellate division final decisions in civil cases, may be made by certiorari. The appellants= petition for certiorari may constitute their notice of appeal. Chuuk v. Ham, 8 FSM R. 467, 468-69 (App. 1998).

Appellate Rule 4(a)(2), which allows a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order to be treated as filed after such entry and on the day thereof, is designed for cases of premature appeals where it is known that the final order or judgment to be entered will merely reflect the earlier decision. It specifically does not apply when Rule 4(a)(4) does. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

A properly filed notice of appeal will not create subject matter jurisdiction in FSM Supreme Court when there is none, but it always has jurisdiction over an appeal to determine if it has subject matter jurisdiction. Damarlane v. Pohnpei, 9 FSM R. 114, 119 n.4 (App. 1999).

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM R. 114, 119 (App. 1999).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, except for the trial court to take action in aid of the appeal, such as an application for release from jail pending appeal, a motion for stay, taxing costs, considering and denying (but not granting unless remanded) a Rule 60(b) relief from judgment motion. Bank of Guam v. O=Sonis, 9 FSM R. 197, 198-99 (Chk. 1999).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record no matter how inadequate the notice because it raises a question addressed to the appellate court=s jurisdiction. Bank of Guam v. O=Sonis, 9 FSM R. 197, 199 (Chk. 1999).

Rule 3(b) is permissive as to filing a joint notice of appeal. No provision in the rule makes this decision irrevocable. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

Rule 28(l) permits appellants to join in a single brief. Implicit in this rule is an appellant=s right to file individually. The right to file an individual brief is not forfeited or waived by the filing of a joint notice of appeal. Chuuk v. Secretary of Finance, 9 FSM R. 255, 257 (App. 1999).

A single justice may dismiss an appeal upon a party=s failure to comply with the appellate rules= time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O=Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O=Sonis v. Bank of Guam, 9 FSM R. 356, 360 (App. 2000).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 466-67 (App. 2000).

The notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, and considering and denying a Rule 60(b) relief from judgment motions (but not granting a Rule 60(b) motion unless case remanded). Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

A trial court memorandum entered after entry of both a final order and a notice of appeal is not an action in aid of the appeal, especially when such a memorandum might necessitate an appellant having to seek leave to amend its issues on appeal or take some other action it would not have otherwise had to, and may be stricken from the appellate record. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM R. 465, 467 (App. 2000).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, with some exceptions all characterized as acts in aid of the appeal, such as motions for release from jail pending appeal, for a stay pending appeal, to proceed *in forma pauperis* on appeal, to tax costs, and the trial court may both consider and deny Rule 60(b) relief from judgment motions, but cannot grant one unless the case is remanded. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record, no matter how inadequate the notice is, because it raises a question addressed to the appellate court=s jurisdiction and the notice of appeal=s filing transfers jurisdiction to the appellate court. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

A notice of appeal divests the trial court of jurisdiction except to act in aid of the appeal. FSM Dev. Bank v. Louis Family, Inc., 10 FSM R. 636, 638 (Chk. 2002).

The 42-day appeal period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division. A certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

A notice of appeal is typically a single page document that names the appellant and the other parties to the proceeding; indicates the order, judgment, or part thereof appealed from; shows the appellate division of the FSM Supreme Court as the court in which the appeal is brought; identifies counsel; and contains a certificate of service. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction

over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

The Chuuk appellate procedure rules require that a notice of appeal be filed with the clerk of the court of the Chuuk State Supreme Court trial division not later than 30 days after entry of judgment. Hartman v. Chuuk, 12 FSM R. 388, 393 n.8 (Chk. S. Ct. Tr. 2004).

By Kosrae statute and State Court Rules of Appellate Procedure, the notice of appeal from Land Court must state specific legal grounds upon which such appeal is based. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 418-19 (Kos. S. Ct. Tr. 2004).

Following review of the transcript and record, appellants may also request to amend the issues stated in the notice of appeal from Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants= failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 419 (Kos. S. Ct. Tr. 2004).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants= late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants= failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal=s dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422-23 (Kos. S. Ct. Tr. 2004).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. The appeal is then properly dismissed. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended,

the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

Appellants must file a subsequent notice of appeal to perfect their right to appeal any of the issues raised by a later attorney fee award order. Appellants must take the necessary steps to perfect an appeal from the trial division=s order awarding attorney=s fees and to consolidate that appeal with the pending appeal on the merits. Felix v. Adams, 13 FSM R. 28, 29-30 (App. 2004).

A second notice of appeal adds nothing to an initial notice of appeal, when it purports to appeal the an earlier non-final – and hence nonappealable – order as well as the already appealed final judgment and is therefore nugatory. AHPW, Inc. v. FSM, 13 FSM R. 36, 44 (Pon. 2004).

If a timely motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. FSM v. Fritz, 13 FSM R. 85, 87-88 (Chk. 2004).

It might have been to a litigant=s advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

A notice of appeal may be filed in either the trial division or the appellate division. A party has the right to represent herself pro se in the trial division (although that may not always be a good idea) and may file a notice of appeal pro se, but appellate division filings usually require an admitted attorney=s signature. Goya v. Ramp, 13 FSM R. 100, 107 & n.7 (App. 2005).

To preserve her client=s appeal rights, a counsel off-island on vacation could either 1) draft a notice of appeal that her client could sign and file pro se in the trial division and mail it to her for filing; or 2) draft a motion to extend time to file a notice of appeal that her client could file pro se and mail it to her for filing; or 3) draft a motion to extend time to file a notice of appeal and mail it to the court for filing; or 4) draft a motion to file by facsimile and mail it to the court for filing, and then fax (and mail) a notice of appeal once she and her client have agreed to payment terms for an appeal. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

A motion to extend time to file a notice of appeal filed before the expiration of the 42-day appeal period can be made ex parte unless the court orders otherwise. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

To preserve her client=s appeal rights, a counsel off-island on an extended vacation, who learns that her client needs her to file an appeal three days before the end of the 42-day appeal period, could either draft and fax a notice of appeal along with a request to file by fax; or draft and fax to her client a notice of appeal that her client could sign and then file pro se in the trial division; or draft and fax a motion to extend time to appeal and mail it along with a notice of appeal; or draft and mail a motion to extend time to appeal along with a notice of appeal, any of which should obtain results before counsel=s scheduled return. Goya v. Ramp, 13 FSM R. 100, 107 (App. 2005).

When no notice of appeal from a post-judgment order awarding attorneys= fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney=s fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the

Director certifies the election, but rather when the aggrieved candidate receives the Director=s decision on the candidate=s petition or until the time has run out for the Director to issue a decision on the candidate=s petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

When no separate notice of appeal from a post-judgment order awarding attorneys= fees is filed, the appellate court lacks jurisdiction to review the order. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 13 (App. 2006).

A properly filed notice of appeal transfers jurisdiction from the trial court to the reviewing court. The transfer of jurisdiction divests the trial court of any authority, except to act in aid of the appeal. Examples of actions which have been construed to aid an appeal include, but are not necessarily limited to: applications for release from jail pending appeal, applications for stay pending appeal, taxation of costs, and considering and denying, but not granting, except upon remand, Rule 60(b) motions for relief from judgment. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

In criminal cases, a defendant=s notice of appeal must be filed within 10 days after the entry of the judgment appealed from. Neth v. Kosrae, 14 FSM R. 228, 231 (App. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

Since a judgment of conviction must set forth the plea, the findings, and the adjudication and sentence, a judgment of conviction cannot be entered until after the defendant has been sentenced. Thus, a notice of appeal may be filed after a finding of guilty but before a judgment of conviction has been entered. Criminal Rule 46(c) applies to this time span. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision=s service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The appellate court acquires jurisdiction over a case and the parties thereto, when a notice of appeal has been timely filed and the parties to the case before the inferior tribunal appealed from have been properly served the notice of appeal. No separate summons is required. Samuel v. Chuuk State Election Comm=n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the

appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm=n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant=s claims are. Mori v. Dobich, 15 FSM R. 12, 13-14 (Chk. S. Ct. App. 2007).

Counsel=s failure to serve the notice of appeal on the appellee=s counsel is not fatal since the Chuuk Appellate Rules require that the clerk of the court appealed from must serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, so if the appellee was not served a copy of the notice of appeal, it is not the appellant=s fault, but an omission by the trial court clerk. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

An appellant=s filing of a notice of appeal in the appellate division is not fatal to his appeal since if a notice of appeal is mistakenly filed in the Chuuk State Supreme Court appellate division, the appellate division clerk must note thereon the date on which it was received and transmit it to the trial division clerk and it will be deemed filed in the trial division on the date so noted, and thus, if the notice of appeal was not transmitted to the trial division (to be served by the trial court clerk on the other party), it was an error of omission on the appellate clerk=s part, not the appellant=s. Bossy v. Wainit, 15 FSM R. 30, 32 (Chk. S. Ct. App. 2007).

The timely filing of a notice of appeal from a final order or judgment is jurisdictional, and a notice of appeal filed before a final order or judgment has been entered is premature and untimely. The common exception is that a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order will be treated as filed after such entry and on the day thereof. Bossy v. Wainit, 15 FSM R. 30, 33 (Chk. S. Ct. App. 2007).

Although the better practice is to file the motion to appear pro hac vice simultaneously with the first filing in the FSM Supreme Court appellate division, it is not uncommon for unlicensed counsel to move for pro hac vice admission at a reasonable time after the filing of a notice of appeal, as meeting the rules= time constraints and thus protecting the client=s interest is of paramount concern. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of a timely motion filed in the FSM Supreme Court trial division by any party, 1) for judgment under Rule 50(b); 2) to amend or make additional findings of fact under Rule 52(b); 3) to alter or amend the judgment under Rule 59; 4) for a new trial under Rule 59; or from the entry of the order disposing of a timely motion for any equivalent relief under comparable rules of any state court from which an appeal may lie, and the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion because a notice of appeal filed before the disposition of any of the above motions has no effect. This applies to appeals from the Kosrae State Court for any motion that sought relief equivalent to any of the four enumerated motions. Alanso v. Pridgen, 15 FSM R. 597, 599 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A notice of appeal filed before the disposition of a Kosrae Rule 59 motion has no effect, and a new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion. Thus, a December 4, 2006 notice of appeal was of no effect and a nullity because a pending Rule 59(e) motion to alter or amend judgment negated that notice of appeal and when no new notice of appeal was filed in the 42-day period following the December 7, 2006 denial of the Rule 59 motion, the FSM Supreme Court appellate division never acquired jurisdiction over the case. Alanso v.

Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The statute of limitations for filing an action is different and distinct from the time limits for filing an appeal from a Land Court or Land Commission decision. An appeal from a Land Court or Land Commission decision is a statutorily-created right. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A party may appeal a Land Court decision within 60 days of being served with a written decision. Before the Land Court Act of 2000, a party could appeal a Land Commission decision within 120 days of receiving notice of the determination. So, for the purpose of filing such an appeal, service of the written determination is a statutory requirement that begins the running of the appeals period. In other words, the service of the determination is a condition precedent to the running of the appeals period. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The time within which a party may file a notice of appeal is calculated from when the trial court judgment is entered, and even when the notice is served by mail, the extra days allowed by Rule 26(c) cannot be added. The same is true for filing a cross-appeal even if the notice of appeal is served by mail, or for any court-ordered deadline even if the court order is served by mail. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 624 (App. 2008).

A notice of appeal must be taken within 42 days after the date of entry of the judgment appealed from. The 42-day period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division and a certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Haruo v. Mori, 16 FSM R. 31, 32 (App. 2008).

The time within which a party may file a notice of appeal is calculated from the date when the final order or judgment being appealed is entered. The deadline is not calculated from the date it was purportedly served on appellant=s counsel. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

An appellate court lacks jurisdiction over, and must dismiss, an appeal when the notice of appeal, including a petition for writ of certiorari, was not filed within 42 days from the date that the final order or judgment being appealed has been entered. Haruo v. Mori, 16 FSM R. 31, 33 (App. 2008).

When the notice of appeal contains the names of both parties in its caption and designates one as the appellee, it is not necessary to repeat them in the text of the notice where one is referred to only as "appellee." Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

The timely filing of a notice of appeal is jurisdictional, but timely certification of service is not. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

An appeal shall not be dismissed for informality of form or title of the notice of appeal. Kosrae v. Langu, 16 FSM R. 83, 86 (App. 2008).

When the notice of appeal only lacks the name, address, and phone number of the appellee=s attorney and a certificate of service and the appellee cannot claim prejudice or that he was misled because the notice did not include his own counsel=s name, address, and phone number and when the lack of a certificate of service would not prejudice him (although the lack of actual service could), the notice of appeal=s defects are not of a jurisdictional nature that would require dismissal. Kosrae v.

Langu, 16 FSM R. 83, 86-87 (App. 2008).

While it is the filing of a notice of appeal that confers jurisdiction on the appellate court, strict adherence to Appellate Rule 3=s requirements is not a prerequisite to a valid appeal. When the defect in the notice of appeal did not mislead or prejudice the appellee, and when the appellant=s intention to appeal the order was manifest, the ineptness of the notice of appeal should not defeat the appellant=s right to appeal. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The FSM Appellate Rules require a criminal defendant to file his notice of appeal within ten days of entry of the judgment of conviction, but the FSM Appellate Rules have no provision for prosecution appeals. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

The Kosrae State Code provides that in a criminal proceeding the prosecution may appeal from the Kosrae State Court only when the court has held a law or regulation invalid, and it further provides that a notice of appeal must be filed within thirty days of receipt of notice of imposition of sentence or entry of the judgment, order or decree to be appealed from, or within a longer time to be prescribed by rule. In the absence of any other filing deadline, the FSM Supreme Court will use the thirty-day deadline of Kosrae Code section 6.401 for prosecution appeals from the Kosrae State Court. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the State Court=s return of service shows that the Kosrae Attorney General=s Office was served the judgment of conviction on June 4, 2008 and when, using the Kosrae statute=s thirty-day deadline, which runs from date of receipt of the order instead of date of entry, the June 30, 2008 notice of appeal is timely when measured from the June 4th service date, the motion to dismiss cannot be granted on the ground the appeal was filed too late. Kosrae v. Langu, 16 FSM R. 83, 87 (App. 2008).

When the notice of appeal was filed not within 42 days of the December 27, 2006 decision but within 42 days of the March 22, 2007 denial of the reconsideration motion, the denial of the reconsideration motion, if it was a Rule 60(b) motion for relief from judgment, would be the only issue before the court on an appeal on the merits. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 131 (App. 2008).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and 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 Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

A timely filing of a notice of appeal is jurisdictional and mandatory. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

The time to appeal a final order in a civil case is 42 days, but the time to appeal a criminal judgment is only ten days. Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 (App. 2011).

Since a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment must be treated as filed after such entry and on the day thereof, when a party in a civil case was held in criminal contempt of court, but the contempt finding was entered on the civil docket and not on the criminal docket, the ten-day period for criminal appeals has not begun to run since no entry has yet been made on the criminal docket, making a notice of appeal filed 37 days after the contempt finding timely under Appellate Rule 4(b). Berman v. Pohnpei Legislature, 17 FSM R. 339, 353

(App. 2011).

When an appeal has been filed in the case, the trial court, in the absence of any authority indicating otherwise, no longer retains jurisdiction over the matter. Chuuk v. William, 17 FSM R. 495, 496 (Chk. S. Ct. Tr. 2011).

Since, when appealing an FSM Supreme Court trial division decision, a party may, at its option, file the notice of appeal either with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or directly with the clerk of the FSM Supreme Court appellate division, where that party, appealing an FSM Supreme Court trial division decision, files a notice of appeal with the FSM Supreme Court trial division clerk in the Kosrae venue on February 22, 2011, and on February 25, 2011, files a notice of appeal with the appellate division clerk, the earlier, February 22, 2011 notice of appeal that was filed with the trial division clerk in Kosrae is the operative one. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507 (App. 2011).

Since a notice of appeal is a paper that the clerk of the court appealed from – the Chuuk Sate Supreme Court trial division clerk – is required to serve on the parties, Appellate Rule 25(b), by its terms, does not apply, and the appellant need only timely file the notice with the court clerk. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

Since the Chuuk Appellate Rules require the clerk of the court appealed from to serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, if the appellee was not served a copy of the notice of appeal, it is not the appellant=s fault, but an omission by the trial court clerk. In such a case, the appellate court cannot dismiss an appeal and deprive an aggrieved appellant of his day in court merely because a court employee may have neglected to perform. Phillip v. Moses, 18 FSM R. 85, 87 (Chk. S. Ct. App. 2011).

If a reconsideration motion in Kosrae State Court were considered analogous to a Rule 50(b) motion or to a Rule 52(b) motion or to a Rule 59 motion and were timely, a notice of appeal filed before the motion was decided would be premature because for any equivalent relief under comparable rules of any state court from which an appeal may lie, the time for appeal for all parties runs from the entry of the order denying a new trial or granting or denying any other such motion and a notice of appeal filed before the disposition of any of the motion would have no effect, and a new notice of appeal would have to be filed within the 42 days following the denial. If the notice of appeal was indeed premature because of a reconsideration motion, then the court would be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 209-10 (App. 2012).

Since an appeal may be taken by filing a notice of appeal with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant=s option, directly with the clerk of the FSM Supreme Court appellate division, a notice of appeal from the Kosrae State Court may be filed with the FSM Supreme Court trial division clerk on Kosrae instead of the appellate division clerk on Pohnpei. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Since an appellate court is without jurisdiction to consider an appeal if there is no timely notice of appeal or if there was no final decision in the court below, the appellate court should rule on jurisdictional matters first because, without jurisdiction, any ruling the appellate court makes on the merits would merely be an advisory opinion which it does not have the jurisdiction to issue. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

If an otherwise timely notice of appeal was indeed premature and of no effect because of a timely petition for rehearing in the Kosrae State Court, the FSM Supreme Court appellate division would then be without jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

When the FSM Supreme Court has not previously considered whether, under FSM Appellate Rule 4(a)(4), a procedural rule which is identical or similar to, or which is drawn from, a U.S. counterpart,

Kosrae Appellate Rule 19(a) is a comparable state court rule, it may look to U.S. sources for guidance in interpreting the rule. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 n.2 (App. 2013).

Since Kosrae Appellate Rule 19(a) is a state court rule that seeks relief equivalent to relief afforded by FSM Civil Procedure Rules 52(b) or 59 because it seeks to obtain a decision or judgment different from the one entered, when the notice of appeal is filed before the disposition of a Rule 19 rehearing petition, there is no final decision or judgment for the FSM Supreme Court appellate division to review and it must dismiss the appeal for lack of jurisdiction. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When a petition for rehearing still remains undecided in the Kosrae State Court, the FSM Supreme Court appellate division will dismiss the appeal for lack of jurisdiction with notice that once the Kosrae State Court has disposed of the rehearing petition, any party may file a new notice of appeal, and the FSM Supreme Court appellate division proceedings will start again. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 508 (App. 2011).

Once the Kosrae State Court has explicitly made its ruling on the appellants= petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

When the record shows that the appellant never filed for an extension with the FSM Supreme Court trial level on or before December 28, 2012, which is 30 days after the expiration of the 42-day appeal period, the November 29, 2012 notice of appeal is untimely. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but the FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)=s time requirements or to grant a motion to extend time to appeal. Only the trial division has the authority to waive or extend the period to file the notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

When no extension was requested, the late filing of the notice of appeal did not conform to the requirement under 4(a)(1), making the filing of the notice of appeal at the appellate level invalid and because the filing of the notice was improper, jurisdiction was never transferred from the trial to the appellate level. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

An appellate court has jurisdiction over an appeal only if it is timely filed because the Rule 4(a)(1) time limit is jurisdictional, and if that time is not extended by a timely Rule 4(a)(5) motion to extend that time period, the appellate division is deprived of jurisdiction to hear the case. Ruben v. Chuuk, 18 FSM R. 604, 607-08 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A single justice may dismiss an appeal for failure to comply with the appellate rules= timing requirements, including the timing requirement to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 608 (App. 2013).

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

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

The FSM Supreme Court appellate division has jurisdiction over an appeal only if the notice of appeal is timely filed because the time limit set by Rule 4(a)(1) is jurisdictional, and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

In civil cases, appeals may be taken from all final decisions of the Kosrae State Court by the filing of a notice of appeal within forty-two days after the date of the entry of the judgment or order appealed. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

One requisite of appellate jurisdiction is that there must be a timely filed notice of appeal. This requirement is mandatory and jurisdictional. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

While a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order must be treated as filed after such entry and on the day thereof, other prematurely filed notices of appeal have no effect and never transfer jurisdiction to the FSM Supreme Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

Sanctions against an attorney may only be appealed when the attorney makes the appeal in the attorney=s own name and as a real party in interest. When the attorney was named in the notice of appeal=s caption and in its body as the real party in interest, that requirement has been satisfied. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

Notwithstanding a notice of appeal=s general effect, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment and may act in aid of the appeal. Because the mere filing of a notice of appeal does not affect the judgment=s validity, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the trial court issued an order awarding attorney=s fees to counsel and a notice of appeal was filed, challenging the fee award, a final appealable order did not exist, thereby precluding appellate review, because the order appealed from established only the pecuniary responsibility for opposing counsel=s reasonable fees but did not establish the amount of those fees. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344 (App. 2016).

When a notice of appeal from the trial court=s order denying reconsideration of the Rule 11 sanctions was lodged on June 20, 2014, the order was not a "final decision" since the specific amount of reasonable costs and attorney=s fees was not determined until the issuance of the August 11, 2014 order. Hence, a subsequent notice of appeal was required in order to perfect an appeal challenging the propriety of levying sanctions. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 344-45 (App. 2016).

A timely notice of appeal from a final decision is a prerequisite to jurisdiction over an appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The Appellate Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by a timely motion to extend that time period under Rule 4(a)(5), the appellate division is deprived of jurisdiction to hear the case. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The relevant period of time, within which to file a notice of appeal is rigid, and the appellate court does not have the authority to allow an appeal that does not adhere to this time frame because an appellate court has jurisdiction over an appeal only if it is timely filed. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

An "Amended Notice of Appeal" that appears in the appellant=s appendix, but that was not served upon the appellees or filed with the court, clearly fails to comply with the timing requirements for filing notices of appeal and is not properly before the court. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court is the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal, but it serves the purpose of commencing the Land Court=s preparation of the transcript and record. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of the written decision service upon the appellants even though there was a two-day delay in filing the notice of appeal with the Land Court. Esau v. Penrose, 21 FSM R. 75, 79 (App. 2016).

An October 22, 2015 notice of appeal was not timely filed since notices of appeal must be filed within forty-two days of entry of the order appealed from, and since October 16, 2015, was the forty-second day after the Pohnpei Supreme Court appellate division denied the petition for rehearing before it. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

A notice of appeal was untimely when the order appealed from was filed and entered on the docket on December 23, 2013 and the appellant filed his notice of appeal on February 10, 2014, because a notice of appeal in a civil case must be filed within 42 days after the date of the entry of the judgment or order appealed from and the 42nd day was February 3, 2014 and because the appellant did not file a motion for extension of time within which to file his notice of appeal and the time for filing for a 30-day extension expired on March 5, 2014. Jano v. Santos, 21 FSM R. 241, 245 (App. 2017).

The timely filing of a notice of appeal is jurisdictional and mandatory. Jano v. Santos, 21 FSM R. 241, 246 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must also serve a copy of the notice of appeal upon the court appealed from. Serment v. Antonio, 21 FSM R. 251, 252 (App. 2017).

The untimely filing of a notice of appeal deprives the appellate court of jurisdiction. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, an appellant must file his notice of appeal: 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant=s option, directly with the FSM Supreme Court appellate division clerk and 2) in the court appealed from. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the FSM Supreme Court appellate division chief clerk, but when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty and the court appealed from has no notice its judgment or order has been appealed and therefore might unknowingly take further actions that are inconsistent with the matter=s status as one subject to further appeal. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and it is then properly dismissed. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

If the appellants failed to file a timely notice of appeal with the court appealed from pursuant to FSM Appellate Rules 3 and 4(a)(1), then the FSM Supreme Court appellate division lacks jurisdiction to hear the matter and must dismiss it. Serment v. Antonio, 21 FSM R. 251, 253 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must also serve a copy of the notice of appeal on the court appealed from. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

An untimely filing of a notice of appeal deprives the appellate court of jurisdiction. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant must file his notice of appeal: 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant=s option, directly with the clerk of the FSM Supreme Court appellate division and 2) in the court appealed from. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the chief clerk of the FSM Supreme Court appellate division and when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty. Furthermore, proper respect due the court appealed from, requires that that court be informed of the appeal so that it may, in its discretion, decide whether to stay its judgment and mandate, thus avoiding the unseemly possibility of two courts unknowingly taking inconsistent actions in the same matter. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

The timely filing a notice of appeal is jurisdictional. Darra v. Pohnpei, 21 FSM R. 254, 256 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court, but, in the absence of a timely notice of appeal, an appellate court lacks jurisdiction over the appeal and it is then properly dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

If the appellant fails to timely file a notice of appeal with the court appealed from, then the appellate court will lack jurisdiction to hear the matter, in which case it must be dismissed. Darra v. Pohnpei, 21 FSM R. 254, 257 (App. 2017).

An untimely filing of a notice of appeal deprives the appellate division of jurisdiction. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

In an appeal from any court other than the FSM Supreme Court trial division, the appellant is required to file his notice of appeal 1) with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or, at the appellant=s option, directly with the clerk of the FSM Supreme Court appellate division and 2) in the court appealed from. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

Filing the notice of appeal in the court appealed from ensures the clerk of that court is put on notice of the duty to prepare, certify, and transmit the record to the chief clerk of the FSM Supreme Court appellate division, and when no service of the notice of appeal is made on the court appealed from, the clerk of the court appealed from has no way to know of this duty. Gallen v. Santiago, 21 FSM R. 258, 260 (App. 2017).

The timely filing of a notice of appeal is jurisdictional. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal and it is then properly dismissed. Gallen v. Santiago, 21 FSM R. 258, 261 (App. 2017).

An appeal to the FSM Supreme Court from another court is permissible, despite the notice of appeal not being directed to all of the appropriate courts as the rules require, when the appeal: 1) was otherwise valid and timely filed in the FSM Supreme Court appellate division; 2) steps were taken to correct the error; 3) the steps to correct the error were undertaken within the period of extension as allowed by the rules; 4) there was no prejudice to the opposing party; and 5) at the time, the appellant was acting as a self-represented litigant. Gallen v. Santiago, 21 FSM R. 258, 261-62 (App. 2017).

An appellant should take steps to cure the defect of not having filed a timely notice in the court appealed from by seeking an extension of the time to appeal in the court appealed from. This is only proper because it is more important that the court appealed from be informed that its decision has been appealed than that the appellate division knows an appeal is on the way. Gallen v. Santiago, 21 FSM R. 258, 262 (App. 2017).

A notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, considering and denying a Rule 60(b) relief from judgment motions (but not granting one unless the case is remanded), and, since the mere filing of a notice of appeal does not affect a judgment=s validity, the trial court also retains jurisdiction to enforce the judgment, unless a stay has been granted. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The filing of a notice of appeal does not operate as a stay. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

When a notice of appeal is filed before the disposition of any Rule 59 motion, it has no effect, and a

new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the Rule 59 motion. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

Appellate Rule 4(a)(4) makes a notice of appeal filed while a Rule 59 motion is pending a nullity and requires the filing of a new notice of appeal once the Rule 59 is decided, but it does not require a new notice of appeal if a pending Rule 60(b) motion is decided. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

The date of service of the judgment does not affect the time to appeal. The time to appeal starts to run on the date the judgment was entered. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

In civil cases, an appeal can only be taken by the filing of a notice of appeal within forty-two days after the date of the entry of the judgment or order appealed from. This time period is jurisdictional and mandatory and cannot be extended without a timely motion to extend filed in the court appealed from, within seventy-two days of the entry of judgment. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Lack of notice of the clerk=s entry of judgment 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 Appellate Rule 4(a) allows. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

When the date of the entry of judgment appealed from was June 14, 2017, and counsel neglected to file a notice of appeal within the forty-two day period within which a party may file a notice of appeal, and no extension of time was sought or granted, the appellate court lacks jurisdiction to consider the appeal=s merits. Ardos v. FSM Social Sec. Admin., 22 FSM R. 1, 3 (App. 2018).

Chuuk Appellate Procedure Rule 4(a)(1) provides that in a civil case, in which an appeal is permitted by law as of right, the notice of appeal must 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. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The timely filing of a notice of appeal is jurisdictional. The appellate court must dismiss an appeal that was untimely filed no matter how meritorious the appellant=s claims are. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

When an August 12, 2014 judgment disposed of all the questions within the post-judgment motion and left nothing as to a review or compliance with its order to be disposed of in the future, the order on that motion was a final order, and the appellant had 30 days to appeal the order but when it failed to appeal within that time limit, the appellate division lacks subject matter jurisdiction to review that motion. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

When, on February 19, 2015, the appellant appealed from a February 11, 2015 post-judgment order, it fell within the allowable time-frame for appeal and the appellate division has subject matter jurisdiction to review only that February 11, 2015 trial division order. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 48 (Chk. S. Ct. App. 2018).

– Notice of Appeal – Extension of Time

Upon showing of excusable neglect or good cause, Rule 4(a)(5) permits extension of time for filing notice of appeal, upon motion made within 30 days after expiration of the 42 days prescribed in Rule 4(a)(1). Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

Rule 26(b) provides for enlargement of time for doing most acts but explicitly excludes enlargement of time to file notice of appeal. A court can grant no relief under Rule 26 for late filing of a notice of

appeal. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

A court has no authority to grant enlargement of time to file notice of appeal pursuant to motion filed after the maximum period of 72 days. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM R. 164, 166 (App. 1986).

For good cause shown, an appellate court may grant an enlargement of time for any act, except notice of appeal or times set by statute in administrative appeals, including a petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

Even if the post-judgment motion for attorney=s fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney=s fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O=Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney=s fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O=Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

The Federated States of Micronesia Supreme Court appellate division may not enlarge the time for filing of a notice of appeal. Any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. FSM Appellate Procedure Rule 4(a)(5) provides that the court appealed from, 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 to file. O=Sonis v. Bank of Guam, 9 FSM R. 356, 360 & n.2 (App. 2000).

Upon a showing of excusable neglect or good cause, the court appealed from 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 Rule 4(a). Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

In the absence of a notice of appeal filed within 42 days after entry of judgment, a putative appellant has a maximum of 72 days after entry of judgment in which to file, for good cause, a motion to extend the time for the filing of the notice of appeal. Hartman v. Bank of Guam, 10 FSM R. 89, 94 (App. 2001).

Upon a motion filed not later than 30 days after the expiration of the time prescribed by Appellate Rule 4(a) and with notice to the other parties, Rule 4(a)(5) allows the court appealed from to extend the time for filing a notice of appeal for excusable neglect or good cause. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Although Rule 4(a)(5) has no absolute deadline within which the court appealed from must rule on a motion to extend time to file a notice of appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. Therefore when there has been no ruling on a motion to extend for almost three years, it is best to treat the lack of a ruling as a denial. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)=s time requirements or to grant a motion to extend time to appeal. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A lower court=s grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

The court appealed from may extend the time to seek appellate review of a final decision upon a

showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time to file a notice of appeal, but when other factors are also present, the neglect may be excusable. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The alternative ground for a motion to extend time to appeal, "good cause" is a broader and more liberal standard than "excusable neglect," and under a plain reading of the rule, the good cause standard applies both to motions to extend filed after the initial appeal period has passed as well as those filed before. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

Under the unique combination of the state court=s lack of a working copy machine, which delayed the entry of that court=s opinion becoming known to the parties; the appellant=s protracted unavailability for consultation with his counsel coupled with the short time left to appeal once he became available; the contemporaneous press of urgent cases; the appellant=s counsel=s diligent and good faith efforts; and the lack of prejudice to the opposing parties; both excusable neglect and good cause existed to extend time to appeal, and that it would have been an abuse of discretion to deny the motion requesting it. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

The grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court=s denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

A notice of appeal from the Chuuk State Supreme Court trial division must be filed with the clerk of the trial division, not with the clerk of the appellate division, no later than 30 days after the entry of the judgment appealed from, as extended by Rule 26(a). Konman v. Esa, 11 FSM R. 291, 295 & n.5 (Chk. S. Ct. Tr. 2002).

A notice of appeal in civil cases must be filed within 42 days of entry of the order or judgment appealed from, and any motion for an enlargement of time to file a notice of appeal must be filed no later than 30 days after the original 42-day period. Ramp v. Ramp, 12 FSM R. 228, 229 (Pon. 2003).

The good cause standard applies to a motion for the enlargement of time to file a notice of appeal when that notice is filed after the original 42 day period. The good cause standard is more lenient than the excusable neglect standard, to which the rule also makes reference. Ramp v. Ramp, 12 FSM R. 228, 229-30 (Pon. 2003).

When preparation of the notice of appeal would not have presented an insurmountable obstacle even given the distance involved and when there was no calendaring error and the notice for enlargement of time to file a notice of appeal was filed on the 72nd day after the entry of the order appealed from, which was the last day for doing so, while this presents a close question under a good cause standard, after careful consideration the court concludes that good cause for granting the enlargement of time to file the notice of appeal has not been stated. Ramp v. Ramp, 12 FSM R. 228, 230 (Pon. 2003).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty-day period. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for

appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27-28 (Kos. S. Ct. Tr. 2004).

No other extension of time to file a notice of appeal is permitted other than that in Appellate Rule 4(a)(5), and the appellate division has no power to enlarge the time within which to file a notice of appeal. This is because the Rule 4(a)(1) time limit is jurisdictional and if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate division lacks jurisdiction to hear the case. Goya v. Ramp, 13 FSM R. 100, 104-05 (App. 2005).

One factor to consider in ruling on a motion to extend time to file a notice of appeal is the length of the delay. When the length of delay was as long as it could possibly be – to the last day of the 30-day extended period and was under the defendant=s counsel=s reasonable control because it was caused by counsel=s unwillingness (and maybe misperceived inability) to try to file anything while she was on vacation in the U.S. and when, given the number of possible steps counsel could have taken and the minimal amount of effort any of them would have required, counsel did not take any, it seems that the delay was purposeful. Goya v. Ramp, 13 FSM R. 100, 108-09 (App. 2005).

What may, in a close case, constitute good cause or excusable neglect for failure to file a notice of appeal until only one or two days after the 42-day period to appeal has expired, may no longer be good cause or excusable neglect 30 days later. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the potential impact on judicial proceedings of granting a motion to extend time to file a notice of appeal that was filed 30 days after the end of the 42-day appeal period, would be to change the 42-day time period to appeal to a 72-day time period where any reason given for not filing a notice of appeal before the 72nd day would suffice, the court will decline to grant the motion. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When the factors of length of delay and its potential impact on judicial proceedings, reason for the delay and whether it was within the reasonable control of the movant, and possibly whether the movant acted in good faith, all weigh against a conclusion that excusable neglect was present and only the danger of prejudice factor does not clearly weigh against a movant who filed a motion to extend time to file a notice of appeal thirty days after the end of the 42-day appeal period, the trial court did not abuse its discretion when it concluded that the movant had not shown excusable neglect, and, given the number of available options, both before and after the end of the 42-day period, the trial court did not abuse its discretion when it concluded that the movant had not shown good cause. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court=s denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A litigant in the Chuuk State Supreme Court trial division has thirty days after a judgment is entered in which to file a notice of appeal. Failing that, they have another thirty days in which to seek an enlargement of time in which to file a notice of appeal if they can show good cause or excusable neglect for the failure to file earlier. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Appellants have thirty days from the date of the order appealed from to file their notice of appeal. Chuuk Appellate Procedure Rule 4(a)(5) permits the trial division to extend the time to file a notice of appeal by another 30 days, or to ten days after the entry of the order granting the extension, if the motion to extend is filed before the second thirty days has expired. The appellate court cannot enlarge the time to file a notice of appeal. Mori v. Dobich, 15 FSM R. 12, 13 (Chk. S. Ct. App. 2007).

The FSM appellate rules allow an appellant to request an extension for filing a notice of appeal up to 30 days in addition to the 42-day period following judgment, creating a 72-day maximum period for perfecting an appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 395 (App. 2007).

The deadline for filing an appeal from the Chuuk State Supreme Court appellate division to the FSM Supreme Court appellate division is 42 days from entry of judgment, which time may be extended an additional 30 days upon a showing of excusable neglect or good cause. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although typically, an appellate judgment is entered at the same time the court enters its opinion, when the date judgment was entered was after the opinion, and when the appellants filed their notice within 42 days from entry of judgment, the notice of appeal was timely, and there was no need to seek an enlargement. Setik v. Ruben, 16 FSM R. 380, 381 (Chk. S. Ct. App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat=l Election Dir., 16 FSM R. 414, 422 (App. 2009).

An appeal in a civil case may be taken by the filing of a notice of appeal as provided in Rule 3 within 42 days after the date of the entry of the order appealed from, and the court appealed from may extend this 42-day period upon a motion, filed not later than 30 days after the expiration of the 42-day time period, showing excusable neglect or good cause. Jonah v. FSM Dev. Bank, 17 FSM R. 506, 507-08 (App. 2011).

Although Appellate Rule 4(a)(5) allows for the extension of 30 days to file the notice of appeal, based on excusable neglect, after the 42 days to appeal has expired, the FSM Supreme Court appellate division may not extend the time for filing of a notice of appeal because any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

The court appealed from, 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 to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 604, 607 (App. 2013).

Either good cause or excusable neglect would suffice as a ground to extend time to file a notice of appeal. Ruben v. Chuuk, 18 FSM R. 637, 639 & n.2 (Chk. 2013).

The trial court can extend the time to file a notice of appeal only upon motion filed not later than 30 days after the expiration of the time to appeal prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

Rule 4(a)(5)=s central purpose is to make clear that a motion for extension of time must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

In order for a motion to extend the time to appeal to be timely when the time prescribed by Rule 4(a) to file a notice of appeal had expired on November 28, 2012, the appellant would have had to file the motion no later than December 28, 2012. Ruben v. Chuuk, 18 FSM R. 637, 639 (Chk. 2013).

The requirement that motions for extension be filed within thirty days of the original deadline is mandatory and jurisdictional, and the failure to make a timely motion to file a notice of appeal out of time

prohibits either the trial court or the appellate court from reviving the right to appeal. Ruben v. Chuuk, 18 FSM R. 637, 639-40 (Chk. 2013).

Because it is simply too late, a court is powerless to grant or even consider a party=s March 25, 2013 motion to extend the time to appeal, even nunc pro tunc and the appeal cannot be revived when the court would have had jurisdiction to grant the motion only if the party had filed his motion by December 28, 2012, since Rule 4(a)(5) plainly permits the court to grant an extension only if the motion is filed within 30 days after the expiration of the original appeal period. Ruben v. Chuuk, 18 FSM R. 637, 640 (Chk. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)=s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

There are two requirements for a valid timely motion to extend the time to appeal. The motion must be filed in the court appealed from and it must be filed within 30 days of the expiration of the 42-day appeal period. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)=s time requirements or to grant a motion to extend time to file a notice of appeal. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

Rule 4(a)(5)=s central purpose is to make clear that a motion for extension of time to file a notice of appeal must be made not later than 30 days after the expiration of the initial appeal time prescribed by Rule 4(a). Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 180 (App. 2013).

No matter how excusable their neglect or how good the appellants= cause, a motion to extend time to appeal will be denied when it was not filed in the court appealed from and it was not filed within 72 days of the decision appealed because the failure to file an extension motion in the court appealed from within the 30-day extension period is fatal to the appellants= attempt to appeal. The FSM Supreme Court appellate division lacks jurisdiction and has no power or authority to do anything in the appeal case other than to dismiss it. Heirs of Weilbacher v. Heirs of Luke, 19 FSM R. 178, 181 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4=s time requirements or to grant a motion to extend time to appeal, a lower court=s grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

Although Rule 4(b) has no absolute deadline within which the court appealed from must rule on a motion to extend the time to appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. The lack of a ruling on the motion to extend is considered a denial. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

When the July 23, 2010 Pohnpei Supreme Court appellate decision was not served on the appellant=s counsel until eleven days after the decision was entered; when the time to appeal in a criminal case is ten days; when the failure to learn of the entry of judgment is a major reason for finding excusable neglect; when the Pohnpei Supreme Court appellate division has not ruled on the appellant=s motion to extend time to appeal; and since the lack of a ruling on the motion to extend is considered a denial, the Pohnpei Supreme Court=s denial of the motion to extend is reversed and the time for the movant to file his notice of appeal is extended 30 days to September 1, 2010. Gleason v. Pohnpei, 19

FSM R. 283, 285 (App. 2014).

The grant of a motion to extend the time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court=s denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Gleason v. Pohnpei, 19 FSM R. 283, 285 (App. 2014).

The time limit under the applicable rules is jurisdictional and the appellate court has no discretion to extend the time within which to file a notice of appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345 (App. 2016).

The time limit for filing a notice of appeal cannot be circumvented via an attempt to obtain an order nunc pro tunc, which runs counter to the underlying purpose of such a motion because the appellant does not seek the order to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date, but instead asks the court to antedate an "Amended Notice of Appeal" that was never served, let alone filed and thus, was not listed in the underlying matter=s certificate of record. That would be improper since the existence of the "Amended Notice" only came to light when it was included in the appendix of the appellant=s opening brief. Abrams v. FSM Dev. Bank, 20 FSM R. 340, 345-46 (App. 2016).

The court appealed from may grant an extension of time for the filing of a notice of appeal not exceeding 30 days upon motion filed within 30 days of the expiration of the 42 days prescribed in Rule 4(a)(1) upon a showing of excusable neglect or good cause. Jano v. Santos, 21 FSM R. 241, 245 n.4 (App. 2017).

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 set by Rule 4(a), but no such extension can exceed 30 days past that time or 10 days from the date of entry of the order granting the motion, whichever occurs later. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 46 (Chk. S. Ct. App. 2018).

The submission of post-judgment motions is irrelevant for the purposes of extending the time of appeal. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 43, 47 (Chk. S. Ct. App. 2018).

– Parties

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

An appellant should include in the caption only those persons or entities party to the appeal. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

An attorney may appeal a sanction, but only if proceeding under his or her own name and as real party in interest. In re Sanction of Woodruff, 9 FSM R. 374, 375 (App. 2000).

Appellate Rule 43 generally allows substitution of parties by their successors in interest, either as a result of a party=s death, a public officer=s replacement, or for other causes. Substitution for other causes is for such things as a party=s incompetency, or the transfer of an interest, or the dissolution, acquisition, merger or similar change of a corporate party. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 625-26 (App. 2003).

The common-sense interpretation of the term "necessary" in Appellate Rule 43(b), which reads: "If substitution of a party in the Supreme Court appellate division is necessary for any reason other than

death . . . ." is that it means that a party to the suit is unable to continue to litigate, not that an original party has voluntarily chosen to stop litigating, and the most natural reading of the Rule is that it only permits substitutions where a party is incapable of continuing the suit, such as where a party becomes incompetent or a transfer of interest in the company or property in the suit has occurred. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

When Pohnpei is not a successor in interest to the parties it seeks to substitute for on appeal or a transferee of any of their interests, but was at all times, a party adverse to their interests, and when the parties sought to be substituted for are not incapable of continuing suit, the motion to substitute parties must be denied. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 626 (App. 2003).

A party to a partial adjudication in a consolidated case is an appellee when an adverse party appeals that decision. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court=s consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov=t v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM R. 3, 8-9 (Chk. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

It might have been to a litigant=s advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM R. 100, 104 n.1 (App. 2005).

When notice of appeal was filed by the then Chuuk Attorney General was ostensibly on behalf of all the defendants below, all of whom were jointly and severally liable for all or parts of the judgment, but the order in aid of judgment and writ of garnishment being appealed were directed solely against the state and state funds, the other defendants were not real appellants in interest since their only possible interest in the appeal was directly adverse to the state=s. This is because if state funds satisfy the judgment then the other defendants= liability is extinguished without any payment by them. It was thus to their advantage that the writ of garnishment against the State was issued and honored. Consequently, the appeal was briefed and argued as if the state was the sole appellant. Chuuk v. Davis, 13 FSM R. 178, 181 n.1 (App. 2005).

When an heir appeared as an individual on his own behalf only, the remaining heirs did not appear in the case and therefore cannot be designated as appellees. Thus, the individual appears representing only his personal and individual claims to the land. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S.

Ct. Tr. 2005).

Appellate Procedure Rule 43, governing the substitution of parties in appeals, relies on Civil Procedure Rule 25. Civil Rule 25 contemplates that a court of competent jurisdiction would confirm or appoint an administrator or personal representative of the deceased=s estate. Since the appellate division does not sit as a probate court of the first instance, the appellate court will not designate a representative of the estate or of the heirs. If a representative is later duly appointed, that representative will be listed as a party. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

A candidate=s supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Under Appellate Rule 28(h), if a cross appeal is filed, the plaintiff in the court below will be deemed the appellant for the purpose of Rule 28 and 31, unless the parties otherwise agree or the court otherwise orders. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 9 (App. 2007).

In an appeal involving a cross-appeal, when the defendants below, who had filed the initial appeal, have filed an unopposed motion to be deemed the appellants, the court may designate the defendants at trial as the appellants in the appeal case for the purpose of complying with Appellate Rules 28, 30 and 31. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 7, 10 (App. 2007).

A deceased party=s personal representative may be substituted as a party, on motion filed by the representative or by any party with the appellate division clerk in accordance Civil Rule 25, or, 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. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).

An attorney is the real party in interest for sanctions imposed on him personally. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 122 (App. 2008).

If certain parties were named as defendants because they were the senior land commissioners in 1991 and 1999, the current senior land commissioner should have been substituted for them. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 551 n.2 (Chk. S. Ct. App. 2009).

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there is no appellee against whom the prevailing appellants may tax costs, the appellants= bill of costs must be denied in its entirety. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 414, 418 (App. 2014).

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 414, 417 (App. 2014).

An appellant should include in the caption only those persons or entities that are a party to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

In an appeal from an attorney sanction order only the sanctioned attorney and the a party to whom the sanction is payable are parties to the appeal. Abrams v. FSM Dev. Bank, 20 FSM R. 309, 310 (App. 2016).

In past practice, it was common for the Kosrae Land Commission to be named a defendant when a party had occasion to complain about one of its acts or omissions since administrative agencies were often named as defendants when a party sought judicial review of the administrative agency=s act or omission. But there is no reason why the Land Court should be a party to such an action because the Kosrae Land Court, unlike its predecessor, is not an administrative agency; it is a court. It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

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

When the Land Court does not own, or claim to own, any interest in a land parcel, it is not a proper party to any dispute over title to that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

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

The Land Court is not a proper party – a real party in interest – to any dispute over title because no judgment against the Land Court could ever give the plaintiffs the relief they seek – ownership of a parcel, which can only be done by an action against the current registered owner or his heirs, if he is deceased. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

– Rehearing

Rehearing denied after review of appellant=s petition. Loch v. FSM, 1 FSM R. 595, 595 (App. 1985).

Where the points of law and fact referred to in a petition for rehearing were not overlooked or misapprehended in the previous consideration of the appeal the petition will be denied. Carlos v. FSM, 4 FSM R. 32, 33 (App. 1989).

Where appellants request a rehearing on the grounds that it is no longer equitable that the judgment have prospective application, and neither the appellate order of dismissal nor the judgment in the state court had by their terms any prospective application the motion will be denied. Damarlane v. Pohnpei Transp. Auth. (I), 6 FSM R. 166, 167 (App. 1993).

After an appellate court has issued its opinion it may grant a petition for a rehearing if it has overlooked or misapprehended points of law or fact. Ordinarily, such petitions are summarily denied. Nena v. Kosrae (II), 6 FSM R. 437, 438 (App. 1994).

A motion for reconsideration of denial of rehearing will be considered as a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

A court has the power to enlarge the time to petition for rehearing and to modify an erroneous decision although the time for rehearing has expired, and sometimes may consider petitions for rehearing filed even after rehearing has been denied. Nena v. Kosrae (III), 6 FSM R. 564, 567-68 (App. 1994).

Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 482 (App. 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

When an appellate court has ruled on those issues necessary to decide the appeal before it and it has neither overlooked nor misapprehended any points of law or fact, it may summarily deny a petition for rehearing. Nahnken of Nett v. Pohnpei, 7 FSM R. 554, 554-55 (App. 1996).

Summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. Nahnken of Nett v. United States, 7 FSM R. 612, 613 (App. 1996).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide this appeal and has neither overlooked nor misapprehended any points of law or fact. Berman v. Santos, 7 FSM R. 658, 659 (App. 1996).

There is no basis on which to grant a motion for rehearing when the court has not overlooked or misapprehended points of law or fact and has not relied on cases not on point and has not deprived appellants of their right to appeal specific costs. Damarlane v. United States, 8 FSM R. 14, 18 (App. 1997).

A summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. In re Sanction of Berman, 8 FSM R. 22, 23 (App. 1997).

There is no basis to grant a petition for rehearing when it does not make any argument or raise any issue not previously considered, and the petitioners had ample time to address those arguments during the pendency of the action. Damarlane v. United States, 8 FSM R. 70, 71 (App. 1997).

The court may summarily deny a petition for rehearing and order the mandate issue immediately when it has carefully considered all of the appellants= arguments and has neither overlooked nor misapprehended any points of law or fact. Iriarte v. Etscheit, 8 FSM R. 263, 264 (App. 1998).

A petition for rehearing may be granted if the court has overlooked or misapprehended points of law or fact that may affect the outcome. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days= (or even a few hours=) continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution=s framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Panuelo v. Amayo, 12 FSM R. 475, 476 (App. 2004).

A court has the power to enlarge the time to petition for rehearing and to modify a decision although the time for rehearing has expired, and sometimes may consider later petitions for rehearing filed even after rehearing has been earlier denied. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing can be granted only if the court had overlooked or misapprehended a point of law or fact. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Ordinarily, the court would require an answer to the petition for rehearing, but when the matter on which rehearing is sought was also previously raised in motions and no response or opposition to the motions was received, the court may chose not to request an answer to this petition. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

A petition for rehearing will be granted when it has been shown that the court has overlooked or misapprehended a point of law or fact, and when the court concludes that it has overlooked something it will grant the petition for rehearing solely to address that issue. FSM v. Udot Municipality, 12 FSM R. 622, 624 (App. 2004).

Regardless of what a post-appellate-judgment motion is called, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

A motion to reconsider judgment filed after the mandate has issued is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition and a motion to recall the mandate. Such a petition may be denied in its entirety as untimely filed. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

Ordinarily, petitions for rehearing are summarily denied, but when the court considers that clarification may be helpful, reasons may be given. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004).

After an appellate court has issued its opinion, it may grant a motion for reconsideration if it has overlooked or misapprehended points of law or fact. Ordinarily such motions are summarily denied. A motion for reconsideration=s summary denial is proper when the court has neither overlooked nor misapprehended any points of law or fact. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

When the points of law and fact referred to in a motion for reconsideration were not overlooked or misapprehended in the appeal=s previous consideration, the motion for rehearing will be denied. Sigrah v. Heirs of Nena, 13 FSM R. 280, 281 (Kos. S. Ct. Tr. 2005).

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Since a party has fourteen days to petition for a rehearing, when an appellate opinion and judgment was entered on January 13, 2005, a rehearing petition should therefore be filed no later than January 27, 2005 or an enlargement of time requested. When the petition was filed February 2, 2005 and no enlargement of time was sought, the petition was untimely filed and could be denied on that ground alone. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Appellate courts do have the power to enlarge the time to petition for rehearing and to modify an erroneous decision even though the time for rehearing has expired. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

Rehearing will be denied when even if the court misapprehended a certain fact, the result in the case would not change. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006).

When the appellant raises no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Goya v. Ramp, 14 FSM R. 305, 308 (App. 2006).

When the appellants timely filed a petition for rehearing asserting that the panel overlooked or misapprehended points of law or fact, but by the next appellate session, one appellate panel member had become employed by the corporation representing the appellants and another had become the Chuuk Attorney General and was representing the state in a related appeal, in which some of the same issues were raised and whose office also represented the appellee in this appeal and then the original presiding justice passed away, it necessitated the appointment of a completely new appellate panel to consider the rehearing petition. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

Once the appellate court has granted a petition for rehearing, it may make a final disposition of the cause without reargument, or it may restore it to the calendar for reargument or resubmission. Nakamura v. Moen Municipality, 15 FSM R. 213, 216 (Chk. S. Ct. App. 2007).

When a petition for a rehearing is based on the court=s ruling in a trial *de novo*, the petition is analogous to a motion for a new trial under the Chuuk Civil Rules of Procedure. The only legal grounds for a new trial are when there is a manifest error of law or fact, or for newly discovered evidence. A motion for a new trial will be denied when the movant has not identified any manifest error of law or fact or any newly discovered evidence. Miochy v. Chuuk State Election Comm=n, 15 FSM R. 426, 428 (Chk. S. Ct. App. 2007).

A summary denial of a petition for rehearing is proper when the appellate court has carefully considered all of the appellant=s arguments and has neither overlooked nor misapprehended any points of law or fact. Damarlane v. Pohnpei Legislature, 15 FSM R. 529, 529 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

A motion to reconsider filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition. Such a petition may be denied in its entirety as untimely filed. Berman v. College of Micronesia-FSM, 15 FSM R. 612, 613 (App. 2008).

When an appellate opinion and judgment were entered on April 14, 2008 and the appellant filed her petition for rehearing on May 5, 2008 without a motion to enlarge time to file the petition, the petition was filed seven days late because Appellate Procedure Rule 40(a) permits a petition for rehearing to be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order and because no court order was issued changing the time within which to file a rehearing petition. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 623-24 (App. 2008).

By its express terms, Appellate Rule 40(a) only allows the time for a petition for rehearing to be enlarged by court order and Rule 26(c) is not a court order. Berman v. College of Micronesia-FSM, 15

FSM R. 622, 624 (App. 2008).

The running of time within which a party may petition the court for a rehearing is not triggered by service of the opinion or judgment. It begins with the "entry of judgment." Thus, it, like the filing of a notice of appeal, a cross-appeal, or the appellant=s opening brief, is not triggered by service, but by entry or filing. Appellate Rule 26(c) does not apply to petitions for rehearing and cannot extend the Rule 40(a) time limit for a petition for rehearing. Berman v. College of Micronesia-FSM, 15 FSM R. 622, 625 (App. 2008).

A motion to reconsider filed after a panel has disposed of the appeal is considered to be a petition for rehearing. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing can be granted only if the court has overlooked or misapprehended a point of law or fact. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

When the petitioner has raised no argument that the court has not already considered and rejected, the court will conclude that it has not overlooked or misapprehended a point of law and rehearing will be denied. Kosrae v. Langu, 16 FSM R. 172, 173 (App. 2008).

A petition for rehearing may be denied as untimely when untimely filed and not accompanied by a request for enlargement of time. Mori v. Haruo, 16 FSM R. 556, 557 (Chk. S. Ct. App. 2009).

When, after a careful consideration of a petition for rehearing, the appellate court has determined that it has neither overlooked nor misapprehended any points of law or fact, it may deny the petition. Berman v. Pohnpei Legislature, 17 FSM R. 452, 452 (App. 2011).

The appellate court will not, on a petition for rehearing, "correct" a factual finding when it made no findings of fact; when the fact objected to is a statement that was the facts as found by the trial court; and when that remained the facts on appeal as the events that occurred that led to the appellant=s arrest even though the Pohnpei police station=s booking sheet differs from those facts in some respects as to the charges for which she was booked. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

Rehearing will be denied when, even if the court had misapprehended a certain fact, the result in the case would not change. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it may summarily deny a petition for rehearing. Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

When, by definition a default judgment is not a judgment obtained on the merits and makes no claim as to the merits of the case at all, the trial court could not have resolved the question of the civil rights nature of the underlying judgment that was a default judgment. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will summarily deny petitions for rehearing. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will deny a petition for rehearing. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 78 (App. 2011).

Ordinarily, petitions for rehearing are summarily denied, but, when clarification may be helpful, some reasons may be given. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When the petitioners= breach-of-contract liability is based solely on the breach of their contractual obligation to immediately remit to the appellee all money received or collected on its behalf and when it is undisputed that they did not immediately remit to the appellee all money received on its behalf, the petitioners would still be liable to the appellee on its breach-of-contract cause of action and the judgment would remain unaltered. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

When even if a petitioner had not signed any of the converted checks, that would not alter the trial court=s finding that she had authorized another to sign her name and thus the result would not change and the petitioners would still be liable to the appellee. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

An appellate court must deny a petition for rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

Kosrae Appellate Rule 19 provides that a petition for rehearing may be filed within 14 days after entry of the Kosrae State Court=s judgment or decision on an appeal from the Kosrae Land Court. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 545 (App. 2013).

Once the Kosrae State Court has explicitly made its ruling on the appellants= petition for rehearing in that court, the appellants may, if they are still aggrieved, file a new notice of appeal within the 42-day appeal period after that denial and ask that their briefs and appendixes already filed in this appeal be used in the new appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 542, 546 (App. 2013).

Regardless of what the party filing a paper seeking post-appellate-judgment relief calls the filing, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

The appellate court can grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Petitions for rehearing are usually summarily denied, but, when clarification may be helpful, some reasons may be given. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

When the Kosrae State Court=s April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court=s July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Since the appellate court must deny a rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change, the correction of a person=s ancestry is not a ground to grant a petition for rehearing. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

While the court may grant a petition for rehearing if it has overlooked or misapprehended points of law or fact that may affect the outcome, petitions for rehearing are usually summarily denied but when clarification may be helpful, reasons may be given. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

A motion for reconsideration of a denial of a petition for rehearing must be considered a second

petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Aritos v. Muller, 19 FSM R. 612, 614 (Chk. S. Ct. App. 2014).

A petition for rehearing must be filed within fourteen days of entry of the judgment, but the court may, by order, enlarge (or shorten) that time. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

A rehearing petition filed after the time to file a petition for rehearing has expired is considered a petition for rehearing, as well as a motion to enlarge time to file such a petition, and may be denied in its entirety as untimely filed. Lee v. Kosrae, 20 FSM R. 229, 230 (App. 2015).

An appellate court will grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Ordinarily, an appellate court will summarily deny a petition for rehearing, but, when clarification may be helpful, it may give some reasons. Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide an appeal and has neither overlooked nor misapprehended any points of law or fact. Notwithstanding, when the court considers that clarification may be helpful, reasons may be given. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

The deadline to file a petition for rehearing is fourteen days afterward. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

Any motion made for reconsideration after the disposal of an appeal is a petition for rehearing. An untimely motion to reconsider is considered a motion to enlarge time to file such a petition as well as a petition for rehearing. Such a petition may be denied in its entirety as untimely filed. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

When the appellate court would still lack jurisdiction because the notice of appeal was untimely filed, it must deny a petition for rehearing even if it has overlooked or misapprehended other points of law or fact because a rehearing would not change the result – the court still lacks jurisdiction. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017).

A petition for rehearing will be denied when the court has neither overlooked, nor misapprehended any points of law or fact because its opinion, which affirmed the Kosrae State Court=s decision, was consistent in rejecting a claim to a parcel=s uppermost portion that protruded onto the property owned by others and because implicit therein was a recognition that the claimant was entitled to the remainder of the parcel and thus, in accordance with the reconfigured boundaries, the respective landowners were, as the Land Court decided, to be issued certificates of title. Tilfas v. Heirs of Lonno, 21 FSM R. 281, 282-83 (App. 2017).

A summary denial of a petition for rehearing is proper when the appellate court has carefully considered all of the appellant=s arguments and has neither overlooked nor misapprehended any points of law or fact, but when the court considers that clarification may be helpful, reasons may be given. Heirs

of Henry v. Heirs of Akinaga, 21 FSM R. 310, 312 (App. 2017).

When nothing new is offered, much less reflective of how the appellate court either overlooked or misunderstood any points of fact or law, and when the appellants simply take issue with the court=s determination to affirm the lower court=s decision, they fail to consider the standard of review to be employed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 314 (App. 2017).

Merely rephrasing arguments that were previously addressed and found to be deficient, in support of the proposition that a rehearing is warranted, cannot prevail and will not convince the court that a rehearing is warranted. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

A petition for rehearing may be denied as untimely when untimely filed and not accompanied by a request for enlargement of time. Setik v. FSM Dev. Bank, 21 FSM R. 604, 605 (App. 2018).

An appellate court may grant a petition for a rehearing if it overlooked or misapprehended points of law or fact. Setik v. Mendiola, 21 FSM R. 624, 625 (App. 2018).

Ordinarily, an appellate court summarily denies petitions for rehearing, but, when clarification may be helpful, some reasons may be given. Setik v. Mendiola, 21 FSM R. 624, 625 (App. 2018).

– Standard – Civil Cases

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly where the party had ample opportunity to raise the issues in the trial court instead of presenting them for the first time on appeal. Paul v. Celestine, 4 FSM R. 205, 210 (App. 1990).

Where no motion has been made to amend the complaint at the trial level and the issue was not tried with the express or implied consent of the parties the general rule is that one cannot raise on appeal an issue not presented in the trial court. Nena v. Kosrae (I), 6 FSM R. 251, 253-54 (App. 1993).

A claim that a trial court=s decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351-52 (App. 1994).

Where a trial court=s decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court=s decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM R. 554, 558 (Chk. S. Ct. App. 1994).

The standard of review for an appeal from the trial division=s determination of an administrative agency appeal is whether the finding of the trial division was justified by substantial evidence of record. FSM v. Moroni, 6 FSM R. 575, 577 (App. 1994).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate

division for review. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court=s summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM R. 581, 586 (App. 1996).

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. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM R. 300L, 300m (Chk. S. Ct. App. 1998).

When Land Commission has received considerable credible and compelling evidence, the trial division=s decision refusing to disturb the Land Commission=s findings that there was substantial evidence to support the Land Commission=s conclusion will not be overturned. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

An appellant may not complain of an error in his favor in the rendition of a judgment. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

When appellants= claim to tidelands has no customary basis and they never had any rights to it, and the only issues raised on appeal, whether the tidelands in question could be transferred without the consent of all the lineage=s adult members and whether the trial court=s decision allowed American citizens to become owners of Chuukese tidelands, are not material and are hypothetical as to the appellants, the trial court will be affirmed. William v. Muritok, 9 FSM R. 34, 35 (Chk. S. Ct. App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM R. 191, 193 (App. 1999).

In reviewing the Land Commission=s decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Kosrae State Court, in reviewing the Land Commission=s procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court=s summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM R. 139, 151 (App. 2002).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature=s intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

When the appellant does not name the persons who he claims were the appellee=s or the appellee=s wife=s "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant=s due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

On an appeal from the Kosrae State Court, before considering the appeal=s other merits, the appellate court must consider whether the Kosrae State Court should have granted the appellant=s motion for a trial *de novo* (instead of conducting a judicial review), since, if he prevails on this point, the appellate court would not consider his other assignments of error. He would be starting afresh with a trial *de novo* before the Kosrae State Court as if nothing had previously happened there. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error – error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. George v. Nena, 12 FSM R. 310, 319 (App. 2004).

The Kosrae State Court must review the Land Court decision on the record, transcripts, and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court's decision was based upon substantial evidence or whether the decision was contrary to law, and if the court finds that the Land Court's decision was based upon substantial evidence and was not contrary to law, the Land Court's decision must be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When a careful review of the record, analysis, and consideration of the parties= arguments shows that the Land Court decision was based upon substantial evidence and was not contrary to law, the Kosrae Land Court decision will be affirmed. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

If, on appeal, the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of

Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees= was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties= settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

When the Land Court=s boundary decision was not based upon substantial evidence, the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 24 (Kos. S. Ct. Tr. 2004).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The general rule is that an issue not raised below will not be considered for the first time on appeal. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

When an appellant failed to raise a state constitutional provision as an argument in its brief but mentioned it at oral argument, the court will not consider it. Chuuk v. Davis, 13 FSM R. 178, 184 n.4 (App. 2005).

When the appellant neither briefed nor argued that part of the trial court=s order holding a statute unconstitutional as it applies to a judgment for violations of civil rights, the appellee correctly took the position that this issue was waived and did not address it, and, for these reasons, the court will not consider the issue. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision only on the record, transcripts, and exhibits received at the Land Court hearing. This review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the decision must be affirmed. Sigrah v. Heirs of Nena, 13 FSM R. 192, 195 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that it was contrary to law, the case must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339 (Kos. S. Ct. Tr. 2005).

Since the Kosrae Land Court procedures recognize the difficulty of receiving testimony and other evidence from claimants, parties, or witnesses who are not represented by counsel and pro se claimants are not well versed in the law and procedural rules and have difficulty understanding the specific procedural requirements and time limitations for the submission of evidence, and when the parties would

have had the opportunity to submit the newly discovered evidence within a motion to amend, set aside or vacate the decision, the Kosrae State Court must conclude that the appellants= rights were violated when the Land Court summarily rejected the purported hand written statement without offering the pro se appellants an opportunity to offer foundation and authentication of the hand written statement and the appellees the opportunity to cross examine the same. Accordingly, the Kosrae Land Court=s ownership decision was made contrary to law, and the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Obed v. Heirs of Wakap, 13 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court is required to apply the "substantial evidence rule" to Kosrae Land Court decisions. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342 (Kos. S. Ct. Tr. 2005).

When based upon consideration of the record for both the Land Commission and the Land Court, and based upon the consideration of the position and knowledge inferred to the eldest son of a landowner who resided at and cultivates the land, the Land Court=s ownership decision for the parcel was not based upon substantial evidence since it failed to consider the appellee eldest son=s admission at the Land Commission proceedings, that the appellants= predecessor-in-interest owned some land at the place. Therefore, the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Taulung v. Heirs of Wakuk, 13 FSM R. 341, 342-43 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Edmond v. Alik, 13 FSM R. 413, 415 (Kos. S. Ct. Tr. 2005).

When the Kosrae Land Court failed to provide statutory notice of the proceeding to an interested party, the determination of ownership must be vacated. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing and the court's review must determine whether the Land Court's decision was based upon substantial evidence and whether the decision was contrary to law. If the court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 430 (Kos. S. Ct. Tr. 2005).

If the Kosrae State Court finds that a Land Court decision was contrary to law, or not based upon substantial evidence, it must remand the matter to the Land Court for further proceedings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly when the party had ample opportunity to raise the issues in the trial court instead of presenting the issue for the first time on appeal. Kitti Mun. Gov=t v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When unclean hands was not pled as a defense to the plaintiff=s claim, and it was not argued in the defendant=s closing statement and the issue was not raised below, it was thus waived. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

The Kosrae State Court must review a Kosrae Land Court decision on the record, transcripts and exhibits received at the Land Court hearing. The court's review must determine whether the Land Court decision was based upon substantial evidence or whether the decision was contrary to law, and if the

court finds that the Land Court decision was based upon substantial evidence and was not contrary to law, the Land Court decision must be affirmed. Kun v. Heirs of Abraham, 13 FSM R. 558, 559 (Kos. S. Ct. Tr. 2005).

Under the statutory provisions applicable to appeals made from a Kosrae Land Court decision, Kosrae State Court is required to apply the "substantial evidence rule" – if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, then the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 35 (Kos. S. Ct. Tr. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court=s decision contrary to law because the Land Court proceeding=s presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

On appeals from a decision entered by the Kosrae Land Court, the Kosrae State Court is required to apply the "substantial evidence rule," and if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 100 (Kos. S. Ct. Tr. 2006).

An appellate court may affirm the trial court=s decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006).

The Kosrae State Court is required to apply the "substantial evidence rule" to all Land Court decisions so that if the court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 288 (Kos. S. Ct. Tr. 2006).

When the Land Court findings and decision relied upon purported written wills which were not part of the record, the Land Court findings were not supported by substantial evidence and therefore the decision must be vacated and the matter remanded for re-hearing. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

When some undisputed testimonies appearing in the transcript raise questions that the Land Court did not assess the evidence properly and when a careful review of the record and transcript finds that the appellants= argument have merit, the Land Court decision was not based upon substantial evidence. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289-90 (Kos. S. Ct. Tr. 2006).

Appellate courts do not make factual findings. Goya v. Ramp, 14 FSM R. 305, 307 n.1 (App. 2006).

When a trial court decision was based on an erroneous conclusion of law, the appellate court will reverse and remand the case to the trial court for further proceedings. Kileto v. Chuuk, 15 FSM R. 16, 17 (Chk. S. Ct. App. 2007).

A court need not, and indeed should not, engage in rendering advisory opinions. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

When the appellate court is unable to make any meaningful review of the trial court judgment because of the virtually complete absence of any findings of fact or conclusions of law and when a trial court has failed to make the findings of fact required by Rule 52(a), or if the findings are insufficient for a

clear understanding and effective appellate review of the basis of the trial court=s decision, the appellate court will vacate the judgment and remand the case to the trial court to make the required findings. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, because of the lack of findings of fact and conclusions of law by the trial court, the appellate court cannot determine whether the judgment was founded on an erroneous or a correct view of the law or whether the record could support a factual basis for the decision, the judgment must be vacated and the case remanded with orders that the trial court enter findings of fact and conclusions of law accordingly. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When, in a March 2004 Order, the court held that the 120-day time limit applied and that the appeal had been filed within 120 days of service of the Land Commission=s decision and therefore the Kosrae State Court had jurisdiction to hear the appeal, and when the appellants presented no new facts or legal argument that would merit reconsidering or changing that decision, it is the law of the case; which the appellants could have appealed after the September 2005 decision, but chose not to do so. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court=s task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When the evidence presented at the Land Court hearing on remand is undisputed because the appellants chose not to appear; when the Land Court carefully considered the appellants= testimony from the records in the case to reach its decision; and when the Land Court=s findings are adequately supported by the evidence, the court will not disturb those findings on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court for the lower court to make findings, the trial judge must make his findings of fact and separately state his conclusions of law, and, in doing so, the trial judge may consult the transcripts and, if necessary, he may also take further evidence. Nakamura v. Chuuk, 15 FSM R. 146, 150-51 (Chk. S. Ct. App. 2007).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

When reviewing the Land Commission=s actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When the order on remand required the Land Court to specifically consider a portion of testimony and the Land Court took additional testimony on remand and specifically analyzed the prior testimony and when the order on remand did not require the Land Court to change its findings or decision, only to

specifically address this point of testimony, the appellant=s argument that the Land Court decision must be overturned on this point must fail because the Land Court addressed the specific issue as required on remand. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

An issue raised for the first time on appeal is waived. The reason for this rule is that the lower court was not given an opportunity to consider the issue. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the record provided by the appellant on appeal does not provide the court with the basis for the trial court findings, the appellate court must therefore presume the findings are correct because by not providing an adequate record, the appellant cannot successfully challenge these findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The appellate court may affirm lower court judgments on grounds other than those employed by the lower court. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

When the appellees= general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter@; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court=s mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court=s order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

The standard of review for appeals from the Kosrae Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court=s task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants= ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the Land Court=s first decision, assessed the evidence and made findings of fact supporting the appellants= ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees= ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But

the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When none of the trial court=s rulings on legal issues, such as the existence of contracts and no liability for interest or attorney=s fees, were appealed, they remain the law of each case on remand. Albert v. George, 15 FSM R. 574, 581 n.2 (App. 2008).

The Kosrae State Court is required to apply the "substantial evidence rule" to all appeals from Land Court decisions. If the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence, or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

When the Land Court relied on equity jurisdiction instead of substantial evidence as required by statutory authority and precedent, its decision was contrary to law and the matter will therefore be remanded to it with instructions and guidance for re-hearing the matter. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap=s Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The FSM Supreme Court may affirm judgments of lower courts for reasons other than those employed by the lower court. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Since, by statute, the Kosrae State Court decides appeals from the Land Court on the parties= briefs, a request for a *de novo* proceeding will be denied and no evidence or testimony will be considered except the official record, transcripts, and exhibits received at the Land Court hearing. The court applies the "substantial evidence rule" when reviewing Land Court decisions. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

If the State Court finds that the Land Court decision was not based upon substantial evidence or that the decision was contrary to law, it must remand the case with instructions and guidance for the Land Court to rehear the matter in its entirety or in such portions as may be appropriate. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

In reviewing the Land Court=s procedure and decision, the State Court considers whether the Land Court: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. The question is whether the Land Court deprived any party of property in an unfair fashion and whether the procedures used ensured a fair and rational decision-making process. The State Court cannot substitute

its judgment for the lower court=s well-founded findings. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court=s 1997 instructions to Land Commission about Yekula can only be considered further guidance (beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

The appellate court need not address again a duplicative argument that it addressed earlier in its opinion. Simina v. Kimeuo, 16 FSM R. 616, 622-23 (App. 2009).

The FSM Supreme Court=s jurisdiction and ability to consider facts and arguments are dictated by Constitution, statute and rule, and the court will not ignore its constitutional duty by permitting the appellants to raise at the appeal=s late date a different theory of the case and factual assertions not raised at the trial level. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

Harmless error is not a ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the trial court granted summary judgment on statute of limitations grounds, the appellate court will, when considering the question of issues of material fact, consider only to those facts needed to determine whether the statute of limitations has run, and not whether the Land Commission process was improper or whether the 1986 determination should be vacated or whether the Land Commission should have ruled in the appellant=s, instead of the appellee=s, favor. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

The appellate court will not substitute its judgment for that of the trial court when the trial court made findings of such essential facts as provide a basis for the decision. Peter v. Jessy, 17 FSM R. 163, 172 (Chk. S. Ct. App. 2010).

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM R. 236, 241 n.2 (App. 2010).

When only three of the seven issues raised by the appellant are ripe for appeal because the trial court made no determination on the other four issues and explicitly did not consider any argument on those issues and made no ruling on those issues below, the appellate court will not address those four. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellate court may first address the ground that the trial judge ought to have recused himself because if the appellant were to prevail on it, the case would be remanded for a new trial and no other issue would need to be addressed. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

Generally, an appellate court will not consider an issue raised for the first time on appeal because when a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Berman v. Pohnpei, 17 FSM R. 360, 367 (App. 2011).

The appellate court will not consider a recusal issue when, by her own account, the appellant knew of the factual basis for a recusal motion long before trial but she delayed raising the issue in the case until she filed her appellate brief. Berman v. Pohnpei, 17 FSM R. 360, 367-68 (App. 2011).

While the trial court incorrectly used the Pohnpei criminal statutes to decide tort elements, this was a harmless error since, if the trial court had correctly applied Pohnpei tort law, the plaintiff still would not have prevailed on her assault and battery claims. A harmless error is not a ground to grant a new trial or to vacate, modify, or otherwise disturb a judgment or order. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

When the plaintiff did not ask the trial court to allow it to use the parcel for an equivalent time period and when this issue was not raised at the trial level, it is not properly before the appellate court, but, given that the case will be remanded for further hearings on damages, this is an issue of damages, to be resolved on remand to the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

Even when an appellee has not moved to dismiss the appeal for lack of jurisdiction over a non-final judgment, the appellate court will consider the question because, generally, only final judgments or orders can be appealed. Stephen v. Chuuk, 17 FSM R. 453, 459 (App. 2011).

When the parties never briefed the issue of takings in the trial court, that issue is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the possible fourth type of civil rights violations – whether a court judgment (state or national) constitutes a property right under the FSM Constitution – was never addressed on the merits by the trial court and was not considered by the court on appeal; when the Barrett appellate decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution; and when the trial court appealed from did not state that the plaintiff had a property right in the state court judgment, the question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

When the trial court observed that the question of ejectment was still open and when there is no evidence in the record that the parties have made further motions or filed further briefs on that question, that question is not properly before the appellate court. Stephen v. Chuuk, 17 FSM R. 453, 463 (App. 2011).

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

A factual finding and a legal conclusion should be vacated on due process grounds when they were arrived at without the benefit of due process of law. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such

portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

When the State Court either applied the wrong (preponderance of the evidence) standard or incorrectly applied the substantial-evidence rule and when the State Court made a clear error of law in its adverse possession ruling and it is difficult to determine to what extent that error tainted the State Court=s review of the Land Court decision, the State Court=s decision must be vacated and the matter remanded for further proceedings in the State Court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court=s original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

When the appellate court ruled that an appellee has the better argument, it did not create a burden of proof for either side, or shift any burden. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

An appellate court may affirm the trial court=s decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 121 (App. 2011).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject-matter jurisdiction is an issue that may be raised at any time. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

When the decision appealed from was the result of a trial de novo on the merits, the usual standards of review of a trial court judgment apply. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Issues of whether an act was a material breach of a contract can be a mixed question of law and fact. An appellate court will review questions of law de novo and will review a trial court=s factual determinations under a clearly erroneous standard. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

When an appellant listed an issue in his brief but did not include any argument about it in his brief and did not mention it during oral argument, the issue must be considered waived. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The standard for appellate review of decisions involving comity can be either the abuse of discretion standard or de novo review depending on the nature of the comity involved. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court=s task to assess the credibility of the witnesses, the admissibility of evidence, and to resolve factual disputes. If the findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

When the appellant presented four issues in his brief, but addressed and labeled only two, the court will address only the two issues actually expanded on by the appellant. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

Conclusions of law are reviewed de novo, and, since a trial court=s findings are presumptively correct, any challenged findings of fact are reviewed using the clearly erroneous standard. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

The appellate court reviews questions of law de novo, but will overturn a lower court=s factual findings only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after considering the entire record, the court is left with a definite and firm conviction that a mistake has been made. Aritos v. Muller, 19 FSM R. 533, 536 (Chk. S. Ct. App. 2014).

Generally, the rule is that an issue not raised below will not be considered for the first time on appeal. Esiel v. FSM Dep=t of Fin., 19 FSM R. 590, 594 (App. 2014).

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Caselaw mirrors the statutory directive that the Kosrae State Court, when reviewing Land Court decisions, must focus on whether the lower court decision was predicated on substantial evidence and not contrary to law. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review for Kosrae Land Court decisions, by not only the Kosrae State Court but also the FSM Supreme Court, is whether the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the Land Court decision must be affirmed even if the evidence would not amount to a preponderance of the evidence but

would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court, when scrutinizing a Kosrae State Court decision that reviewed a Land Court decision, is whether the Kosrae State Court abused its discretion by failing to properly apply its standard of review. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 n.2 (App. 2016).

An appellate court cannot ignore applicable, controlling law, even if the parties have. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418-19 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor=s partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

When neither the doctrine of *res judicata* nor equitable estoppel was addressed by trial court, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

An appellate court may affirm the trial court=s decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

On appellate review, the Kosrae State Court must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

When reviewing a Land Court decision, the Kosrae State Court must determine if the record contained evidence supporting the Land Court decision that was more than a scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision, even if the evidence would not in the State Court=s view, amount to a preponderance of the evidence, but would be somewhat less and even if the State Court would have decided it differently. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

An appellate court may affirm the trial court=s decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

An appellate court need not address an appellant=s duplicative arguments. Tilfas v. Kosrae, 21 FSM

R. 81, 94 (App. 2016).

The FSM Supreme Court need not dwell on apparent conflicts between two lines of cases in the U.S., but should search for reconciling principles which will serve as a guide to FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 226 (App. 2017).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on a subsequent appeal. The three exceptions are: 1) the evidence at a subsequent trial is substantially different; 2) there has been an intervening change of law by a controlling authority; and 3) the earlier decision is clearly erroneous and would work a manifest injustice, but only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. When none of these exceptions apply, the law of the case doctrine requires the later appellate court to rely on the prior appellate decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 313 (App. 2017).

When an appellate court finds nothing that contradicts a Trust Territory High Court judgment previously rendered on the issue of ownership of the land in question and the state court decision is based solely on the prior Trust Territory judgment, the trial court will be affirmed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

Generally, the rule is that an issue not raised below will not be considered for the first time on appeal. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Setik v. Mendiola, 21 FSM R. 537, 554 n.3 (App. 2018).

When a judge has sat in violation of an express statutory standard for disqualification, the usual remedy is that the disqualified judge=s rulings are, on appeal, to be vacated. Setik v. Mendiola, 21 FSM R. 537, 560 (App. 2018).

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Alik v. Heirs of Alik, 21 FSM R. 606, 620 n.7 (App. 2018).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review because the general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

The appellate court will disregard a contention that the appellants believe that the same FSM Supreme Court law clerk, who worked on their other trial court cases, worked on this case in the trial court when they do not explain how this would entitle them to any relief and when they do not point to any reason that disqualified this particular law clerk from assisting the FSM Supreme Court trial judge in this case. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

When an appellant has failed to present arguments in support of two issues that he presented on appeal, it would be improper for the appellate court to address those unsubstantiated issues. The appellate court will conclude that the appellant has waived those two issues. George v. Palsis, 22 FSM R. 165, 172 (App. 2019).

Generally, a court should weigh four factors before granting a stay pending appeal: 1) whether the appellant has made a strong showing that it is likely to prevail on the appeal=s merits; 2) whether the appellant has shown that it will be irreparably harmed without the stay; 3) whether the stay=s issuance

would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the most important factor is the first, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in a stay=s favor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206 (Pon. 2019).

One who seeks an injunction pending appeal must show irreparable injury. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206 (Pon. 2019).

The law of the case doctrine posits ordinarily an issue of fact or law decided on appeal may not be reexamined either by the trial court on remand or by the appellate court on subsequent appeal. The law of the case proscription applies regardless of whether the issue was decided explicitly or by necessary implication. This reflects the sound policy that, once the court has finally decided an issue, a litigant cannot demand that it be decided again. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

Three exceptions to the law of the case doctrine permit a court to depart from a prior appellate ruling in the same case: 1) if the evidence at a subsequent trial is substantially different; 2) if there has been an intervening change of law by a controlling authority; and 3) if the earlier decision is clearly erroneous and would work a manifest injustice. Only in extraordinary circumstances may a court sustain a departure from the law of the case doctrine on the ground that a prior decision was clearly erroneous. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 207 (Pon. 2019).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. The general rule is that on appeal a party is bound by the theory advanced in the trial court and cannot urge a ground for relief which was not presented there. An issue raised for the first time on appeal is waived. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When a litigant raises an issue for the first time on appeal, he or she is deemed to have waived the right to challenge the issue unless it involves a plain error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 623 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Abuse of Discretion

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

In order to overturn the trial judge=s denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM R. 326, 330 (App. 1992).

The fashioning of remedies and sanctions for a party=s failure to comply with discovery requirements is a matter within the trial court=s discretion and should not be disturbed by an appellate court absent a showing that the trial court=s action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court=s discretion for a trial court to admit testimony that is inconsistent with that witness=s answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party=s answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of

Guam (II), 6 FSM R. 345, 350 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM R. 433, 436 (App. 1994).

The standard of review of a trial court=s ruling on a motion for relief from judgment is whether the trial court has abused its discretion. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445 (App. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court=s exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court=s exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM R. 537, 539 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM R. 554, 557 (Chk. S. Ct. App. 1994).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant=s right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM R. 654, 656 (App. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney=s subjective intent. Damarlane v. United States, 8 FSM R. 45, 58 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The standard for review of the exercise of discretion by the trial justice is the abuse of discretion standard because the trial judge has the opportunity to observe the demeanor and candor of the witnesses and is in the best position to make the determination on issues of fact. In re Ori, 8 FSM R. 593, 594 (Chk. S. Ct. App. 1998).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

The trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The standard of review of a court=s imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM R. 79, 86 (App. 2001).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 137 (App. 2001).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court=s determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court=s findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court=s findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its

decision. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A judge abuses his discretion when his action violates a litigant=s right to due process because such action is clearly unreasonable. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

A lower court=s grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM R. 139, 146 (App. 2002).

A court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Bualuay v. Rano, 11 FSM R. 139, 147 (App. 2002).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case=s circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant=s right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The issue of whether a trial court erred in issuing an injunction is reviewed using an abuse of discretion standard. FSM v. Udot Municipality, 12 FSM R. 29, 52 (App. 2003).

The FSM Supreme Court=s standard of review of a Kosrae State Court=s judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks= office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings= fairness, integrity, and public reputation, regardless of opposing counsel=s service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court=s denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM R. 100, 109 (App. 2005).

A trial court=s Appellate Rule 5(a) certification is subject to an abuse of discretion standard. Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005).

A trial court=s imposition of discovery sanctions is reviewed on an abuse of discretion standard. Since fashioning remedies and sanctions for a party=s failure to comply with discovery requirements is a matter within the trial court=s discretion, the appellate court will not disturb them absent a showing that the trial court=s action unfairly resulted in substantial hardship and prejudice to a party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 245-46 (App. 2006).

Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney=s subjective intent. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

A trial court=s abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

The question before an appellate court is not whether the appellate court would have imposed the sanction the trial court did, but whether the trial court abused it discretion in doing so. FSM Dev. Bank v. Adams, 14 FSM R. 234, 252 (App. 2006).

The question on appeal is not whether it was an abuse of the trial court=s discretion to quash a deposition subpoena for a party, but whether the trial court abused its discretion in awarding expenses and attorney=s fees as sanctions for quashing the subpoena. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Whether a trial court erred in granting leave to amend a complaint is usually reviewed on an abuse of discretion standard, but when the decision is based on a legal conclusion, the review is de novo. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When the trial court decided to grant leave to amend based on its determination that the interests of justice outweighed any prejudice that might accrue to the appellants if the amendment were allowed, this was not a legal conclusion by the trial court, but rather an exercise of its discretion and therefore the trial court=s decision will be reviewed on an abuse of discretion standard. Arthur v. FSM Dev. Bank, 14 FSM R. 390, 394 (App. 2006).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor=s ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State=s right to due process and the order constitutes an abuse of the trial court=s discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

A court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Thus, failures to rule on motions were an abuse of the trial justice=s discretion and led to further reversible error in the trial justice=s rulings. Ruben v. Hartman, 15 FSM R. 100, 109 (Chk. S. Ct. App. 2007).

When the trial judge made no rulings on motions to dismiss and for relief from judgment or order and so failed to exercise whatever discretion he may have had to rule on them, he abused his discretion since a court abuses its discretion by an unexplained failure to exercise its discretion within a reasonable time. Murilo Election Comm=r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 64 (App. 2008).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife=s uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

For an appellate court to find that a trial court=s factual findings were in error is an abuse of discretion standard of review. An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. Simina v. Kimeuo, 16 FSM R. 616, 619-20 (App. 2009).

Relief from a judgment under Rule 60 is addressed to the court=s discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court=s denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657-58 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants= liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court=s review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document=s authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court=s determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court=s denial of the affidavit=s admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court=s sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court=s abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court=s order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court=s abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court=s decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

The abuse of discretion standard sets a high bar for reversal. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

The standard of review appropriate in allegations of abuse of discretion is that an abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence upon which the court could rationally have based its decision. This standard implies that the reviewing court must also review the decision below for erroneous conclusions of law and clearly erroneous findings of fact. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

The standard of review appropriate for denials of writs of garnishment is the abuse of discretion standard. An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence upon which the court could have rationally based its decision. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

When a trial court has the power to fashion an alternative remedy, but a party neither files a request for such alternative nor urges it at a hearing for the remedy the party actually requested and when the trial court has not foreclosed the possibility of the alternative remedy, the trial court has not abused its discretion by not fashioning its own relief. Stephen v. Chuuk, 17 FSM R. 453, 462 (App. 2011).

A lower court=s denial of an extension of time is reviewed under the abuse of discretion standard. A court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision, and such abuses must be unusual and exceptional. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 626 (App. 2011).

In determining if a lower court abused its discretion, the appellate court cannot substitute its own judgment for that of the lower court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 627-28 (App. 2011).

When the Kosrae State Court was arbitrary in denying the enlargement, and it based its ruling, in part, on an erroneous conclusion of law that the excusable neglect standard was the same as the good cause standard or that it could apply the excusable neglect standard to the appellants= enlargement motion because Kosrae Appellate Rule 9(b) mandates that the good cause standard be used, not the higher excusable neglect standard and when record so large that it cost over $1,500 and four appellate briefs and appendixes, in two separate cases, had to be prepared from it between December 21, 2009 and February 1, 2010, and during that time, counsel also conducted a trial plus the usual press of business, a twelve-day enlargement to complete two of the four appellate briefs would be reasonable, especially when the State Court did not cite any prejudice to the opposing party, the State Court should thus have granted their enlargement motion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court, under Kosrae Appellate Rule 9(b), does not have such unbridled discretion as to deny an enlargement motion when if good cause is shown because if it did, its actions would only be arbitrary or capricious and thus an abuse of discretion. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

The Kosrae State Court=s discretion lies in determining whether the reasons given, taking all the surrounding circumstances into account, constitute good cause. Once it has determined that there is good cause for an enlargement, then the State Court should grant the motion unless some countervailing reason, such as demonstrable prejudice to the opposing party if the enlargement is granted, would militate against it. In such instances, the State Court may have some discretion to deny it. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

When the Kosrae State Court abused its discretion by not granting an enlargement of the date to file the appellants= opening briefs and that denial is reversed, then it follows that the dismissal must also be vacated. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard, using an objective standard rather than assessing an attorney=s subjective intent. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 372 (App. 2012).

Since the standard of review of a trial court=s ruling on a motion for relief from judgment is whether the trial court has abused its discretion, the standard of review for a relief from an entry of default logically should also be abuse of discretion. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

The appellate court reviews the issue of whether a trial court erred in issuing, modifying, or denying an injunction by using the abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

A court may abuse its discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Damarlane v. Damarlane, 19 FSM R. 97, 105 (App. 2013).

Since the grant of a motion to consolidate rests with the trial court=s broad judicial discretion, an appellate court will review the trial court=s denial of consolidation on an abuse of discretion standard. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

A trial court=s abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

If, whether attorney=s fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court=s discretion to award attorney=s fees, the grant or denial of an attorney=s fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Rule 11 sanction orders are reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

A trial court abuses its discretion by misunderstanding the balance-of-injuries factor and by considering only the speculative injury to the plaintiffs and completely failing to consider the actual injuries to the defendant. Nena v. Saimon, 19 FSM R. 317, 329 (App. 2014).

When the trial court never considered requiring a bond and especially since its preliminary injunction was not aimed at preserving the status quo, the failure to require a bond is a further ground to hold the preliminary injunction invalid and its issuance an abuse of the trial court=s discretion. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

A trial court abuses its discretion by issuing a preliminary injunction without proper notice and an opportunity to be heard; by issuing a preliminary injunction when there was no irreparable injury to the movants and the balance of harms strongly favored the non-movant; and by issuing a preliminary injunction without requiring or considering a bond. That preliminary injunction will be reversed. Nena v. Saimon, 19 FSM R. 317, 330 (App. 2014).

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court=s sound discretion. Accordingly, the lower court=s decision about relief from judgment should be reviewed only upon a showing that the trial judge=s ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

An appellate court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether to impose Rule 11 sanctions is subject to the trial court=s discretion. As such, an abuse of discretion standard is utilized to review lower court decisions that address the propriety of these sanctions. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

An abuse of discretion occurs when: 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

In addition to appeals of Rule 11 sanction orders being reviewed under an abuse of discretion standard, an objective standard is employed, as opposed to assessing an attorney=s subjective intent. Since the underlying reason for imposing Rule 11 sanctions is to deter baseless and frivolous filings, an appellate court will objectively scrutinize the lower court=s analysis about the merits of imposing Rule 11 sanctions. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26-27 (App. 2016).

The FSM Supreme Court=s standard of review when scrutinizing a Kosrae State Court decision, which in turn, reviewed a Land Court decision, is whether the former abused its discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

A Rule 41(b) dismissal is generally reviewed for abuse of discretion. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Waguk v. Waguk, 21 FSM R. 60, 65-66 (App. 2016).

The complaining party has the burden of showing that the trial court abused its discretion. Such abuse will not be presumed. It will be presumed that the discretion was proper. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Although res judicata and collateral estoppel can be raised *sua sponte*, it is an abuse of discretion to apply those doctrines when the judgment on which it rests was neither valid, final, nor on the merits. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court=s sound discretion. Accordingly, the lower court=s decision should be scrutinized, with an eye toward determining whether the trial judge=s ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An abuse of discretion occurs when: 1) the court=s decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

A lower court=s decision to dismiss a case should be scrutinized, with an eye toward determining whether it is an abuse of discretion on the presiding judge=s part. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

An abuse of discretion occurs when: 1) the court=s decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence, on which the court rationally could have based its decision. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

A court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Silbanuz v. Leon, 21 FSM R. 336, 340 (App. 2017).

The Pohnpei appellate division=s failure to rule on a motion to enlarge time by four days is a failure to exercise discretion (to grant or deny a motion), and is itself an abuse of discretion. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

When the Pohnpei Supreme Court appellate division granted the appellant=s requests for 124 days of enlargement to file her brief and when, a month after the brief had actually been filed, that court effectively denied her timely request for the four days of enlargement by concluding that she "chose to remain silent in the end" and then dismissed her appeal, under these circumstances, this denial of the appellant=s timely request to file her brief three or four days late was so arbitrary and capricious as to be an abuse of discretion that violated the appellant=s right to due process under the FSM Constitution, and which would require reversal. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

An appellate court=s review of a trial court=s grant or denial of a Rule 60(b)(1) motion focuses on whether there was an abuse of discretion. An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision, and such an abuse must be unusual and exceptional. Gallen v. Moylan=s Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 383-84 (App. 2017).

An abuse of discretion occurs when: 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 423 (App. 2018).

When an appellant filed an appendix, but failed to include the relevant filings concerning the issue of whether the trial court abused its discretion in denying the motion for enlargement of time, the record does not demonstrate error and the appellate court must presume the trial court acted within its discretion. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 425 (App. 2018).

Since Rule 60(b) relief from judgment is addressed to the court=s sound discretion, an appellate court reviews the trial court=s denial of relief from judgment using the abuse of discretion standard. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

The denial of a Rule 60(b) motion does not bring up the underlying judgment for review. The appellate court=s review is limited to whether the trial court abused its discretion in denying the Rule 60(b) motion because Rule 60(b) is not a substitute for a direct appeal from an erroneous judgment. That a judgment is erroneous does not constitute a ground for relief under the Rule. Setik v. FSM Dev. Bank,

21 FSM R. 505, 514 (App. 2018).

The trial court=s issuance of an order transferring title six days after the bank filed its motion and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier=s check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial judge. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 530-31 (App. 2018).

A reviewing court, reviewing the record as a whole and considering evidence detracting from, as well as supporting, the respective decision, will find an abuse of discretion only if it has a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

An appellate court reviews, under an abuse of discretion standard, a trial court=s grant or denial of relief in an independent action to set aside a judgment. Setik v. Mendiola, 21 FSM R. 537, 552 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant=s right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court reviews a trial court=s denial of a motion for a continuance under an abuse of discretion standard. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court reviews a trial court=s denial of a motion for a continuance under an abuse of discretion standard. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court could have rationally based its decision. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

Once the facts are found, that are not determined to be clearly erroneous, the question becomes whether those facts were sufficient evidence to meet the burden of proof, which is a question of law measured by the abuse of discretion standard. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

An appellate court reviews a trial court=s denial of a Rule 60(b) motion under an abuse of discretion

standard. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The standard of review for a denial of a motion to recuse is whether the trial judge abused his discretion in denying the motion to recuse. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The standard test for a trial court=s abuse of discretion is whether its decision is clearly unreasonable, arbitrary, or fanciful, or if the decision was based on an erroneous conclusion of law or if there is no evidence in the record upon which the court could have rationally based its decision, and an appellate court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the lower court committed a clear error of judgment in its conclusion. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

Involuntary dismissals under Kosrae Civil Rule 41(b) are reviewed for abuse of discretion, with adjudication dependent on whether the circumstances surrounding the delay justify dismissal. An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Jackson v. Siba, 22 FSM R. 224, 229-30 (App. 2019).

When an appellant takes issue with both the trial court=s findings of fact and its subsequent dismissal order, it requires a two-tier analysis. The appellate court first reviews the trial court=s findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

When it was an error of law for the trial court to apply the fourteen-day rule; when it was a clearly erroneous finding of fact that the previous delays were all, or were mostly attributable to the plaintiffs, it was therefore an abuse of the trial court=s discretion not to grant the enlargement under the "cause shown" standard. Jackson v. Siba, 22 FSM R. 224, 233 (App. 2019).

An abuse of discretion occurs when: 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or, 4) the record contains no evidence on which the court could rationally have based its decision. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision, and a judge abuses his discretion when his action violates a litigant=s right to due process because such action is clearly unreasonable. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 618-19 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Admission of Evidence

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court=s discretion for a trial court to admit testimony that is inconsistent with that witness=s answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial.

Contradictions between a party=s answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

A trial court=s errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court=s decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

When the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court=s finding of fact, which an appellate court should not set aside where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When the full and complete record of prior Land Commission proceedings was admitted into evidence at a Land Court hearing and that record contained documentary and testimonial evidence of an oral will, it was proper for the Land Court to consider and rely upon the Land Commission record, including the evidence pertaining to the oral will. Accordingly, the Land Court's consideration of the Land Commission record, including evidence of the oral will, was not contrary to law. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627-28 (Kos. S. Ct. Tr. 2004).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court=s exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court=s review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document=s authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn=t require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir=s requirements and their own expert witness presented evidence that the trial court found credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will

not, therefore, entertain a new theory regarding achemwir=s requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter=s substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence 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. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A trial court decision issuing, modifying, or denying an injunction is reviewed using an abuse of discretion standard. A trial court=s abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Berman v. Pohnpei, 19 FSM R. 111, 114-15 (App. 2013).

The appellate court reviews whether a trial court erred in issuing, modifying, or denying an injunction under an abuse of discretion standard. Berman v. FSM Nat=l Police, 19 FSM R. 118, 124 (App. 2013).

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police=s actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat=l Police, 19 FSM R. 118, 124 (App. 2013).

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat=l Police, 19 FSM R. 118, 125 (App. 2013).

Since the granting of a motion to consolidate rests with the trial court=s broad judicial discretion, an appellate court reviews the trial court=s denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat=l Police, 19 FSM R. 118, 126 (App. 2013).

Whether a trial court erred in issuing an injunction is reviewed using the abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

– Standard – Civil Cases – De Novo

Issues of law are reviewed *de novo* on appeal. Nanpei v. Kihara, 7 FSM R. 319, 323-24 (App. 1995).

An appellate court applies the same standard in reviewing a trial court=s grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

The appellate court applies de novo the same standard in reviewing a trial court=s grant of summary judgment as that used by a trial court under Rule 56. Nahnken of Nett v. United States, 7 FSM R. 581, 585-86 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant=s right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 621 (App. 1996).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff=s claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

An appellate court applies the same standard in reviewing a trial court=s grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM R. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court=s grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM R. 270, 272 (App. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Motions the trial court decided as a matter of law are issues of law and are reviewed de novo. Weno v. Stinnett, 9 FSM R. 200, 206 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff=s burden of proof is a question of law distinct from

issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The standard of review of a summary judgment on appeal is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 410-11 (App. 2000).

Whether a trial court erred in dismissing a complaint for failure to state a claim is an issue of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

An appellate court applies the same standard in reviewing a trial court=s grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430 (App. 2000).

When the question presented is one of law, it is reviewed on a de novo basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

Issues of law are reviewed de novo on appeal. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

Issues of law are reviewed *de novo*. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM R. 139, 149 (App. 2002).

An appellate court may affirm the trial court=s summary judgment on a different theory when the record contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM R. 139, 150 n.3 (App. 2002).

Questions of law are reviewed *de novo*. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case=s circumstances, and calls for an appellate court to apply an abuse of discretion

standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant=s right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

In reviewing the trial court=s grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 358 (App. 2003).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The FSM Supreme Court=s standard of review of a Kosrae State Court=s judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

Issues of law are reviewed de novo on appeal. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Sigrah v. Kosrae, 12 FSM R. 320, 324 (App. 2004).

A contention that the trial court erred as a matter of law when it afforded relief on an unjust enrichment claim is reviewed de novo. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

Those issues which are questions of law are reviewed *de novo*. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

Whether a financial privilege with respect to non-party borrower records should be recognized; whether a loan agreement=s terms created intended third-party beneficiaries; and whether the trial court could award attorney=s fees as part of the third-party beneficiary claim are questions of law, which an appellate court reviews de novo. FSM Dev. Bank v. Adams, 14 FSM R. 234, 246 (App. 2006).

On appeal from a summary judgment based dismissal, the standard of review is a *de novo* determination that there was no genuine issue of material fact and that the party who prevailed below was entitled to judgment as a matter of law. In other words, the reviewing court applies the same standard that the trial court employed when it determined whether the moving party was entitled to summary judgment. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and

treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

Issues of law are reviewed de novo on appeal. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

All issues of law are reviewed de novo on appeal. Akinaga v. Heirs of Mike, 15 FSM R. 391, 396 (App. 2007).

Whether a party was a bona fide purchaser without notice and whether the consent of all adult lineage members is needed for the sale of lineage land are issues of law, which the appellate court reviews *de novo*. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Trial court judgments issued without a trial are summary judgments to which the trial court should have applied the summary judgment standard to its rulings. The appellate court=s standard of review of those rulings thus must be the one used to review summary judgments. It must apply *de novo* the same standard that a trial court uses in its determination of a summary judgment motion, which is that summary judgment is proper only when, viewing the facts in the light most favorable to the party against whom judgment is sought, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

Due process issues are generally questions of law. Questions of law are reviewed *de novo* by the appellate court. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

An appellate court applies the same standard in reviewing a trial court=s grant of a summary judgment motion that the trial court initially employed under Rule 56(c). It views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 590 (App. 2008).

On appeal, issues which are questions of law are reviewed de novo. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58, 59, 61, 62 (App. 2008).

In reviewing an issue de novo, an appellate court applies the same standard in reviewing the trial court=s grant of summary judgment as that initially employed by the trial court itself, *i.e.*, whether there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

It is within a single justice=s power to, upon the justice=s own motion and with adequate notice, dismiss an appeal for an appellant=s failure to timely file an opening brief. Like any other single justice order, an aggrieved party may seek review of the dismissal order by a full appellate panel, which must then consider it. Review of a single justice order is *de novo*. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

A full panel=s review of a single justice order is *de novo*. Palsis v. Tafunsak Mun. Gov=t, 16 FSM R. 116, 129 (App. 2008).

Whether judgment was improperly entered in the appellees= favor when the appellants contend that they did not appear and present their case at trial because they had not received notice of trial is an issue of law which is reviewed de novo. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions *de novo*, and motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews *de novo*. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Barrett v. Chuuk, 16 FSM R. 229, 232 (App. 2009).

Issues of law are reviewed de novo on appeal. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

Issues of law are reviewed de novo on appeal. Simina v. Kimeuo, 16 FSM R. 616, 619 (App. 2009).

Issues of law are reviewed *de novo* on appeal. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

An appellate court applies the same standard in reviewing a trial court=s grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court=s legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

On appeal, issues of law are reviewed *de novo*. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

Contentions involving due process issues are generally questions of law, and questions of law are reviewed *de novo*. Berman v. Pohnpei, 17 FSM R. 360, 369 (App. 2011).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. Berman v. Pohnpei, 17 FSM R. 360, 370 n.3 (App. 2011).

Although, when denying the plaintiff=s due process claims, the trial court may have been imprecise when it failed to specify that the one claim Pohnpei was liable for was also a due process claim and it was on all of the other due process claims that the trial court ruled in Pohnpei=s favor, any imprecision in, or confusion caused by, the trial court language would not entitle the appellant to any relief. Berman v. Pohnpei, 17 FSM R. 360, 371-72 (App. 2011).

Whether a litigant is entitled to an attorney=s fee award is a question of law, which an appellate court reviews de novo. Berman v. Pohnpei, 17 FSM R. 360, 375 (App. 2011).

Conclusions of law will be reviewed de novo. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court applies the same standard in reviewing a trial court=s grant of summary judgment as that applied by the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434-35 (App. 2011).

Statutory interpretation is a matter of law and issues of law are reviewed de novo on appeal. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Conclusions of law will be reviewed de novo. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Conclusions of law will be reviewed de novo. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

Since due process issues are questions of law that are reviewed de novo, and since, if the appellants were to prevail on the due process claims, the appellate court would vacate the decisions below without further considering the merits and remand the matter for new proceedings, the appellate court will analyze the due process issues first. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

Trial court decisions concerning questions of law are reviewed de novo. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. An appeals court will apply the same standard in reviewing a trial court=s grant of summary judgment as that applied by the trial court. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 545 (App. 2011).

Issues of law are reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A trial court=s contract interpretation will reviewed de novo because the interpretation of contract provisions is a matter of law determined by the court. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

A statutory provision=s interpretation and application is an issue of law reviewed de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

Questions of law are reviewed *de novo*. Kosrae v. Edwin, 18 FSM R. 507, 511 (App. 2013).

Whether the damages sought in a default judgment constitute a sum certain is a matter of law which is reviewed de novo. Damarlane v. Damarlane, 19 FSM R. 97, 104 (App. 2013).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

The appellate court applies the same standard in reviewing a trial court=s grant of summary judgment that the trial court initially employed under Civil Procedure Rule 56(c), that is, it views the facts

in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Since interpretation of contract provisions is a matter of law to be determined by the court, an appellate court will review de novo the interpretation of contract provisions. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

Any issues of law are reviewed de novo. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

In reviewing a grant or denial of summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion, which the court applies de novo to determine whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Smith v. Nimea, 19 FSM R. 163, 168-69 (App. 2013).

Interpretation of contract provisions is a matter of law to be determined by the court, and an appellate court reviews issues of law de novo. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

Appellate courts interpret contract language de novo. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

When the contract language is clear and the record is clear, the appellate court may, on an alternate ground, affirm the trial court=s decision denying an employee=s claims for wages and overtime claims when the state administrative decision found as fact that he worked only on the projects for which he was paid a commission and when that decision was necessarily before the trial court when it was asked to grant partial summary judgment. Smith v. Nimea, 19 FSM R. 163, 171 (App. 2013).

Since Kosrae State Court orders in aid of judgment and the accrual of post-judgment interest are governed by Kosrae statutes and since an issue on a statute=s application is an issue of law, the review will be de novo. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

If, whether attorney=s fees should have been awarded presents a question of law, that question is reviewed de novo, but when it is within the trial court=s discretion to award attorney=s fees, the grant or denial of an attorney=s fees request is reviewed under the abuse of discretion standard. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

Questions of law are reviewed de novo. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300 (App. 2014).

Review of conclusions of law is de novo. In re Sanction of Sigrah, 19 FSM R. 305, 310 (App. 2014).

The appellate court applies the same standard in reviewing a trial court=s grant of summary judgment that the trial court initially employed under Rule 56(c), that is, it views the facts in the light most favorable to the party against whom judgment was entered and it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

Jurisdictional issues are mainly questions of law. Questions of law are reviewed de novo. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337 (App. 2014).

When the question presented is one of law, it is reviewed on a de novo basis. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 429 (App. 2014).

A grant or denial of summary judgment is reviewed using the same standard that the trial court initially used under Rule 56(c) in its determination of the summary judgment motion. Thus, the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Esiel v. FSM Dep=t of Fin., 19 FSM R. 590, 593 (App. 2014).

Matters of law are reviewed de novo. Esiel v. FSM Dep=t of Fin., 19 FSM R. 590, 593 (App. 2014).

Since the interpretation of contract provisions is a matter of law to be determined by the court, the appellate review is de novo. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

Issues of law are reviewed de novo on appeal. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 21 (App. 2015).

An appellate court applies the same standard in reviewing a trial court=s grant of summary judgment as that initially employed by the trial court under Rule 56(c). Thus, the standard of appellate review of a summary judgment is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

In reviewing a trial court=s grant of summary judgment, the appellate court applies the same standard employed by the trial court under FSM Civil Rule 56. Under Rule 56, unless a court, viewing the facts and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Matters of law are reviewed de novo. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

In reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used under Rule 56(c) when it determined the summary judgment motion – the appellate court determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

An appellate court reviews issues of law de novo. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

Questions of contract interpretation are matters of law to be determined by the court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

An appellate court reviews de novo any matters of law. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Issues of law are reviewed de novo. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties= standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

When the case on appeal is subject to *de novo* review, the reviewing court is empowered to affirm a lower court=s decision on grounds other than those utilized by the latter. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment

that the trial court initially did. Therefore, if it concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. Kama v. Chuuk, 20 FSM R. 522, 528 (Chk. S. Ct. App. 2016).

Issues of law are reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Issues of law are reviewed de novo on appeal. Waguk v. Waguk, 21 FSM R. 60, 66 (App. 2016).

Issues of law are reviewed de novo on appeal. Esau v. Penrose, 21 FSM R. 75, 77 (App. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Issues of law are reviewed de novo on appeal. Lonno v. Heirs of Palik, 21 FSM R. 103, 106 (App. 2016).

Issues of law are reviewed de novo on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions *de novo*. Fuji Enterprises v. Jacob, 21 FSM R. 355, 359 (App. 2017).

The appellate court reviews issues of law de novo. Gallen v. Moylan=s Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

Since 53 F.S.M.C. 703 expressly grants Social Security rule-making power, judicial review is limited to determining whether the promulgated regulations exceed the statutory authority, which is an issue of law reviewed de novo on appeal. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

An appellate court has plenary authority over a lower court=s review of an agency decision, and applies the same legal standards that pertain in the trial court and accords no deference to the lower court=s decision. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 n.2 (App. 2018).

The question of whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff=s burden of proof is a question of law, and issues of law are reviewed de novo on appeal. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

Issues of law, including the Kosrae Land Court=s jurisdiction and the applicable statute of limitations (to the extent it does not require factual findings) are reviewed de novo. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

When reviewing a summary judgment, an appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – the appellate court determines de novo

whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

Whether a trial court erred by dismissing a complaint for failure to state a claim is an issue of law, which is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

To review a summary judgment, the appellate court uses the same standard that the trial court initially used when it determined the summary judgment motion – it determines de novo whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The question of whether the statute of limitations bars a claim is a question of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

An appellate court uses a two-part standard to review a laches defense since it is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is a factual determination which depends upon the circumstances, and calls for us to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant=s right is a question of law that is reviewed de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Appellate review of the equitable defenses of estoppel and waiver is similar to appellate review of a laches equitable defense since they are mixed questions of law and fact. An appellate court reviews an equitable estoppel defense for clear error for any factual findings and uses an abuse of discretion standard to review its application. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Which court is the proper forum for a case is generally a jurisdictional issue. Jurisdictional issues are mainly questions of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Which court is the proper forum for a case is generally a jurisdictional issue. Jurisdictional issues are mainly questions of law, which the appellate court reviews de novo. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

Issues of law are reviewed de novo on appeal. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

Issues and matters of law are reviewed *de novo*. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

Issues that are questions of law are reviewed de novo. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

Whether a particular dispute falls within the scope of a court=s subject matter jurisdiction is an issue of law. Issues of law are reviewed de novo. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

The appellate court uses the same standard to review a grant or denial of a summary judgment motion that the trial court initially used. Thus, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it

concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it will rule de novo on whether the movant was entitled to judgment as a matter of law. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 618 (Chk. S. Ct. App. 2020).

Since an appellate court does not set aside findings of fact unless they are clearly erroneous, it starts its review of a trial court=s factual findings by presuming the findings are correct, and, if it determines that substantial evidence supports the trial court findings, it will not disturb those factual findings on appeal. But even then, if the appellate court does not disturb the facts, as found, it must ask whether those factual findings are sufficient to meet the plaintiff=s burden of proof. Since the trial court=s answer to that question is a legal conclusion and thus a ruling on a point of law, the appellate court reviews that conclusion de novo. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

– Standard – Civil Cases – Factual Findings

The trial court finding of recklessness is a finding of fact which may not be set aside on appeal unless it is clearly erroneous. FSM Civ. R. 52(a). Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

The standard of review on appeal on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 165 (App. 1987).

The standard of review on a question of the sufficiency of the evidence is whether it is clearly erroneous. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

The standard of review of a trial court=s factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge but in reviewing the findings it may examine all of the evidence in the record in determining whether the trial court=s factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 59 (App. 1993).

Clear error in key factual findings merits setting aside conclusions of law and is one factor indicating incorrect use of discretion. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Where the trial court found no negligence and the appeal court upon review of the record does not find the trial court=s factual findings to be clearly erroneous the trial court=s dismissal of the negligence claim will be affirmed. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

Where the trial court=s finding that damages were not proven at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wito Clan v. United Church of Christ, 6 FSM R. 291, 292 (App. 1993).

In determining whether a trial court=s findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to the appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

An appellate court should not set aside a trial court=s finding of fact where there is credible evidence in the record to support that finding. The trial court, unlike the appellate court, had the opportunity to view the witnesses and the manner of their testimony. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Because findings of fact shall not be set aside unless clearly erroneous an appellate court starts its

review of a trial court=s factual findings by presuming the findings are correct. The appellant=s burden to clearly demonstrate error in the trial court=s findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses= credibility, the trial court had the opportunity to view the witnesses= demeanor as they testified, while the reviewing court has not. Cheni v. Ngusun, 6 FSM R. 544, 546 (Chk. S. Ct. App. 1994).

An appellate court may set aside a trial court=s factual findings as clearly erroneous when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

A trial court=s findings of fact shall not be set aside unless clearly erroneous, and the appellate court shall give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

A trial court=s factual findings are presumed correct. An appellate court must be especially circumspect in reviewing a trial court for clear error when there was conflicting evidence presented on issues of fact because the trial court had the opportunity to observe the witnesses= demeanor while it has not. Emilios v. Setile, 6 FSM R. 558, 560 (Chk. S. Ct. App. 1994).

If an appellant alleging clear error fails to show that the trial court=s factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Emilios v. Setile, 6 FSM R. 558, 561 (Chk. S. Ct. App. 1994).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Whether a debtor has the ability to comply with an order in aid of judgment is a finding of fact, which will be set aside on appeal only if it is clearly erroneous. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, but it should not set aside a finding of fact where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Hadley v. Bank of Hawaii, 7 FSM R. 449, 452 (App. 1996).

The Chuuk State Supreme Court appellate division will affirm a trial court=s findings of fact unless the findings are clearly erroneous. Rosokow v. Chuuk, 7 FSM R. 507, 509 (Chk. S. Ct. App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court=s findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 620 (App. 1996).

A trial court=s qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

The appropriate standard of review when reviewing a trial court=s finding on sufficiency of the evidence is whether the trial court=s finding is clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Damarlane v. United States, 8 FSM R. 45, 53 (App. 1997).

The appellate division will not set aside findings of fact unless clearly erroneous, and due regard will be given to the trial court=s opportunity to judge the credibility of the witnesses. Marcus v. Suka, 8 FSM R. 300a, 300b (Chk. S. Ct. App. 1998).

Due regard must be given to the opportunity of the trial judge to weigh the witnesses= credibility. During the testimony, a trial judge may take into account the witness=s appearance, manner, and demeanor while testifying, his apparent frankness and intelligence, his capacity of consecutive narration of acts and events, the probability or improbability of the story related by him, the advantages he appears to have had for gaining accurate or retentiveness of his memory as well as the lapse of time affecting it, and even the intonation of his voice and his positiveness or uncertainty in testifying. It may affect the credibility of a witness that he is expressing his belief as to a particular matter, rather than his knowledge, or that he testifies positively rather than negatively; or that he has made prior statements which are inconsistent with his trial testimony. Marcus v. Suka, 8 FSM R. 300a, 300b-0c (Chk. S. Ct. App. 1998).

To reverse the trial division=s findings of fact, the appellate division must find that 1) the trial division=s findings are not supported by substantial evidence; 2) there was an erroneous conception by the trial division of the applicable law; and 3) the appellate division has a definite and firm conviction that a mistake has been made. Marcus v. Suka, 8 FSM R. 300a, 300c (Chk. S. Ct. App. 1998).

Findings of fact will not be set aside unless clearly erroneous, and due regard shall be given to the trial court=s opportunity to judge the witnesses= credibility. The appellate court starts its review of a trial court=s factual findings by presuming the findings are correct which means that the appellant has the burden to clearly demonstrate error in the trial court=s findings. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The trial court will be affirmed when the appellant, challenging the weight given a witness=s uncorroborated testimony, has failed to furnish the appellate court with a means to review all the evidence presented to the trial justice and nothing is found in a review of the record and briefs to indicate that the trial justice=s factual findings were clearly erroneous. Lewis v. Haruo, 8 FSM R. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The standard of review of a trial court=s adoption of a special master=s report is whether the adoption of the special master=s findings was clearly erroneous. This same standard of review applies to a special master=s report. Thus, if a special master=s report is clearly erroneous, then it, like a trial court opinion, may be set aside. Thomson v. George, 8 FSM R. 517, 521 (App. 1998).

In determining whether a factual finding is clearly erroneous, an appellate court cannot substitute its judgment for that of the fact finder. The trial court=s factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Thomson v. George, 8 FSM R. 517, 522 (App. 1998).

A review of the trial court=s factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court=s findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses= credibility. Hartman v. Chuuk, 9 FSM R. 28, 30 (Chk. S. Ct. App. 1999).

When the trial court has carefully observed the demeanor of all the witnesses, the trial court will not be put in error unless its findings of fact are clearly erroneous. William v. Muritok, 9 FSM R. 34, 36 (Chk. S. Ct. App. 1999).

A review of the trial court=s factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court=s findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses= credibility. The appellate court does not have the same opportunity to view the witnesses and as a result, it must be especially circumspect in reviewing a trial court for clear error. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court=s factual findings are correct. The trial court=s grant or refusal to adopt an expert=s opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

When the appellate court finds nothing in the record on appeal that contradicts the master=s findings or the High Court judgment previously rendered on the issues of ownership of the land in question and the state trial court judgment appealed from is based solely on the previous High Court decision, the trial court will be affirmed. Bualuay v. Rano, 9 FSM R. 39, 40 (Chk. S. Ct. App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court=s finding is clearly erroneous. When the trial court=s finding that damages were not proved at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court=s findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A trial court=s factual findings adequately supported by substantial evidence in the record cannot be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff=s burden of proof is a question of law distinct from issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000).

If an appellant alleging clear error fails to show that the trial court=s factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

When the trial judge believed one witness=s testimony and not another=s, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion, since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony, and the appellate court did not have that

opportunity. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 463 (App. 2000).

There are not reasons to find clearly erroneous the trial court=s finding that the defendant continued to utilize her IDD service after she requested termination when the trial court had before it evidence that the calls reflected the same pattern as existed throughout the billing period. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

An appellate court cannot say that the trial court=s finding was clearly erroneous when it was the result of weighing conflicting evidence. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 464 (App. 2000).

The standard of review of a trial court=s factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court should not set aside a finding of fact when there is credible evidence in the record to support that finding, in part because the trial court, unlike the appellate court, had the opportunity to view the witnesses= demeanor and the manner of their testimony. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

If, upon reviewing all the evidence in the record, an appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

An appellate court cannot substitute its judgment for that of the trial court where the court made findings of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court=s findings were improper, there was no clear error in the trial court=s factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When reviewing a trial court=s Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court=s findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court=s findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM R. 134, 138 (App. 2001).

The appellate court starts its review of a trial court=s factual findings by presuming the findings are correct. This means that an appellant has the burden to clearly demonstrate error in the trial court=s findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses= credibility. The reviewing court does not have the same opportunity. Phillip v. Moses, 10 FSM R. 540, 543 (Chk. S. Ct. App. 2002).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court=s factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

A trial court=s factual findings can be overturned only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An appellate court starts its review of a trial court=s factual findings by presuming the findings are correct. The appellant=s burden is to clearly demonstrate error in the trial court=s findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses= credibility. The reviewing court does not have the same opportunity. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

A trial court=s factual findings can be overturned only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 214 (Chk. S. Ct. App. 2002).

The trial court will be affirmed when the appellants have not overcome the presumption that a trial court=s findings are correct, and have not met their heavy burden of showing that the trial court=s findings were clearly erroneous and when there was substantial evidence in the record to support the trial court=s decision that the island belonged to the appellees and a review of the entire record does not leave the appellate court with the definite and firm feeling that a mistake has been made. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. The reviewing court will set aside a finding of fact only where there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

When the trial court did not make any finding as to what the prior custom and practice had been, the purpose of a remand to the trial division is for it to determine what the prior customary and traditional practice was. The appellate court can make no finding as to what the customary and traditional practice has been concerning Fayu because that finding must first be made by the trial court. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

It is not the appellate court=s place or function to make factual findings in the first instance. An appellate court may review a trial court=s findings for clear error, but it cannot use the trial court record to supplant the trial court and act as fact finder. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The standard of review of a trial court=s factual findings is whether those findings are clearly

erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

If, upon viewing all evidence in the record, the appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. George v. Nena, 12 FSM R. 310, 313 (App. 2004).

The fact that the trial court based its findings of fact in part on a witness=s testimony, when he was not subject to cross examination, is not clear error if other credible evidence supports the same findings of fact. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When, viewing the evidence in the light most favorable to the appellee, the appellate court does not have a definite or firm conviction that any mistake was made by the trial court, it cannot find that the trial court=s decision was clearly erroneous. George v. Nena, 12 FSM R. 310, 317 (App. 2004).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court=s judgment as to the witness=s credibility, there is no significant evidence to overcome even "some evidence" of Timothy=s ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

It is primarily the task of the Land Court, and not the reviewing court, to assess the credibility of the witnesses, consider the admissibility of evidence and to resolve factual disputes. This is because it is the Land Court who is present during the testimony and offer of evidence. On appeal, the reviewing court should not substitute its judgment for well-founded findings of the lower court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

A review of the trial court=s factual findings is done under the "clearly erroneous" standard and the appellant has the burden to clearly demonstrate error in the trial court=s findings. The appellant has a very strong burden to overcome for the reason that the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses= credibility. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

Any of three conditions are required for the court to find reversible error when the trial court findings are alleged to be clearly erroneous: first, if the trial court findings were not supported by substantial evidence in the record; second, the trial court=s factual finding was the result of an erroneous conception of the applicable law; and third, if the appellate court is of firm conviction that a mistake has been made. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

For an appellate court to find that a trial court=s finding is in error it must determine that the finding was clearly erroneous. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. The trial court=s finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

The Kosrae Land Court=s factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court=s findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court=s task to assess the witnesses= credibility, the admissibility of evidence, and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court=s well-founded

findings. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court=s factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court=s findings and decision were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court=s task to assess the witnesses= credibility, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

When, after careful review of the record, the Kosrae State Court concludes that the factual disputes before the Land Court were properly resolved and the Land Court=s finding that the conditions pertaining to continued ownership of land had been fulfilled was supported by substantial evidence, it will not substitute its judgment for the Land Court=s well-founded findings, and when the Land Court=s findings and conclusions in awarding the appellee ownership were supported by substantial evidence and are not contrary to law, the Land Court decision must be affirmed. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Court=s factual findings and decision can be overturned only if they are not supported by substantial evidence. In considering whether the Land Court=s findings and decision were based upon substantial evidence, the court recognizes that it is primarily the task of the Land Court to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 481 (Kos. S. Ct. Tr. 2005).

When a decedent=s will did not identify or list the parcel as one of the parcels belonging to the decedent; when a brother and a sister of the decedent both testified that the parcel was not owned by the decedent; and when it is the Land Court=s duty to assess the witnesses= credibility, the admissibility of evidence, to resolve factual disputes, and to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence which was made by a person, now deceased, and therefore not subject to cross-examination, the Land Court properly resolved the factual disputes, whose findings were supported by substantial evidence. The reviewing court will not substitute its judgment for the Land Court=s well-founded findings. Heirs of Nena v. Heirs of Nena, 13 FSM R. 480, 482 (Kos. S. Ct. Tr. 2005).

On a challenge to the sufficiency of the evidence in support of the trial court=s findings of fact – the standard of review applicable to the trial court=s findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the reviewing court, after considering the evidence in the light most favorable to the appellee, is left with the firm and definite conviction that a mistake has been committed. The trial court=s findings are presumptively correct. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 513 (App. 2005).

For those issues challenging a trial court=s factual findings the standard of review is whether those findings are clearly erroneous, and in determining whether a factual finding is clearly erroneous, the appellate court must view the evidence in the light most favorable to the appellee. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 14 (App. 2006).

The standard of review for findings of fact is whether the trial court=s findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

When the trial court=s finding that the trochus business was generally not profitable was not clearly erroneous, that finding must stand. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25 (App. 2006).

Land Court findings and decisions will be overturned if they are not supported by substantial

evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court=s task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the lower court=s well-founded findings. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 524 (Kos. S. Ct. Tr. 2007).

The standard of review for appeals from the Land Court is set by statute. Findings and decisions of the Land Court will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decisions were based upon substantial evidence, the Kosrae State Court recognizes that it is primarily the Land Court=s task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. On appeal, the Kosrae State Court should not substitute its judgment for the well-founded findings of the lower court. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

The Kosrae State Court must uphold Land Commission findings as issued by the Land Court if they are supported by substantial evidence. This does not mean that the evidence must be uncontroverted or undisputed. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

The appellate court reviews factual findings on a clearly erroneous standard, and questions of law *de novo*. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

When the trial court=s findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand because it is not the appellate court=s place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses= credibility, and the appellate court did not. Mathias v. Engichy, 15 FSM R. 90, 96-97 (Chk. S. Ct. App. 2007).

When the appellate court has remanded a case to the trial court because the lower court=s findings were inadequate, the trial judge must make his findings of fact and separately state his conclusions of law used to arrive at his decision, and, to assist, the trial judge may consult the transcripts, the filed proposed findings of fact and conclusions of law, and, if necessary, he may also take further evidence. Mathias v. Engichy, 15 FSM R. 90, 97 (Chk. S. Ct. App. 2007).

The appellate court reviews questions of law *de novo*, but will overturn a trial court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

When the trial court=s findings are inadequate, the appellate court should not try to resolve the factual issues itself, but should vacate the judgment and remand since it is not the appellate court=s place or function to make factual findings in the first instance or to supplant the trial court and act as fact finder. Remand is appropriate since the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses= credibility, and the appellate court has not. Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007).

The clearly erroneous standard is met either when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

The Land Court=s factual findings and decision are overturned on appeal if they are not supported by substantial evidence. In considering whether the Land Court=s findings and decision was based upon substantial evidence, the appellate court should not substitute its judgment for the lower court=s well-founded findings since it is primarily the Land Court=s task to assess the witnesses= credibility, the admissibility of evidence and to resolve factual disputes. The appellate court views evidence in the light most favorable to the appellee, looking for a definite or firm conviction that a mistake was made and therefore that the lower court=s decision was clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 297 (Kos. S. Ct. Tr. 2007).

In determining whether a trial court=s findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to an appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

When the evidence cited by the appellants to support their new argument is that the hand drawn map from the earlier case does not look enough like the maps in the current case, their conjecture that they may not be the same does not leave the court with a definite and firm conviction that a mistake has been made. When construing the evidence in a light favorable to the appellees; this conjecture is not enough to demonstrate a clear error. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 346 (Kos. S. Ct. Tr. 2007).

The Land Court is responsible for assessing the credibility of the witnesses, the admissibility of evidence and resolving factual disputes. If its findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

A trial court finding of fact is clearly erroneous when, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with the definite and firm conviction that a mistake has been committed. Albert v. George, 15 FSM R. 574, 579 (App. 2008).

When the ledger sheets, from which the trial court derived each judgment amount, were never authenticated by affidavit or by testimony and neither were their accuracy vouched for by affidavit, or testimony, or other evidence; when, even though the defendants may have agreed at the hearing to the ledger sheets= admissibility (i.e., authenticity), it is seriously doubtful that they could have agreed to the

ledger sheets= accuracy since one defendant had not seen the business ledger and the other specifically questioned the accuracy of certain charges; and when, if they had been stipulating to the ledgers= accuracy, that would have been a waiver of any rights they had left since no other issues of fact or right to trial would have remained, the appellate court can only conclude that the defendants, when they left it up to the court "without waiving any rights" did not intend to, and did not, waive their rights to trial on disputed material facts, that is, on the amounts owed. The trial court=s findings that the cases had been submitted to it for its decision, that is, that the facts including the ledger sheets= accuracy had been stipulated to, is thus clearly erroneous. Albert v. George, 15 FSM R. 574, 580 (App. 2008).

On appeal, the appellate court will review the evidence in the light most favorable to the appellee, and findings will be upheld when there is credible evidence to support them, in part because the trial court viewed the witnesses and their manner during testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

It was clear error by the Land Court to dismiss, based on a finding of lack of corroboration, a witness=s testimony about the existence of an agreement to divide the land when a review of the record shows testimony from a number of witnesses referring to the existence of an agreement. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661 (Kos. S. Ct. Tr. 2008).

A remand is proper when the court, reviewing the record as a whole, is convinced that the Land Court=s decision is not based on substantial evidence because the Land Court found no corroborating evidence for a witness=s testimony about an agreement to divide land but the record shows multiple witnesses testified regarding an agreement to divide land; because the Land Court made inconsistent findings regarding the effect of failing to exclude other heirs from using the land; and because the Land Court made no findings regarding the use of different portions of the land despite testimony from multiple witnesses that different heirs used different portions. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 661-62 (Kos. S. Ct. Tr. 2008).

The standard of review for findings of fact is whether the trial court=s findings are clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. For an appellate court to find that a trial court=s finding is in error it must determine that the finding was clearly erroneous. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

The trial court was free to accept or reject the testimony that the reef in question is owned by Tomil and that the people of neighboring Rull had some fishing rights in the waters surrounding the reef, and the reviewing court will only set aside those findings of fact when there is no credible evidence in the record to support the finding as the trial court had the opportunity to view the witnesses and the manner of their testimony. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

Whether the evidence was sufficient to support the trial court=s verdict for the appellees involves a review of the trial court=s findings of fact and is reviewed under a "clearly erroneous" standard. An appellate court will overturn a trial court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Farek v. Ruben, 16 FSM R. 154, 156 (Chk. S. Ct. App. 2008).

Issues of whether the evidence was sufficient to support the trial court=s verdict for the appellees and whether the trial court properly found that the evidence was insufficient to support appellants= claim of adverse possession are both issues that involve a review of the trial court=s findings of fact under a

"clearly erroneous" standard. An appellate court will overturn a trial court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Setik v. Ruben, 16 FSM R. 158, 162-63 (Chk. S. Ct. App. 2008).

In meeting the clearly erroneous standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court=s finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that the appellants ever challenged the ownership of the land, the court will not overturn the trial court=s ruling against the claim for adverse possession without anything to indicate error in the trial court=s finding that the appellants= use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

For an appellate court to find that a trial court=s factual finding is in error, it must determine that the finding was clearly erroneous. A trial court=s finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

The test as to the adequacy of trial court findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An appellate court cannot say that the trial court=s finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness=s testimony and not another=s, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

Although the appellants may consider the timing of a witness=s rebuttal testimony to be problematic, when the witness=s testimony is not contradictory to his testimony before rebuttal and when the trial court=s findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness=s direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When, given the trial court=s wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court=s findings, the appellate court will reject argument that the trial court=s legal conclusions were erroneous because the trial court=s factual findings are not supported by credible evidence. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

In considering whether a Land Court decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court=s task to assess the witnesses= credibility, the admissibility

of evidence, and to resolve factual disputes. A finding that substantial evidence supports the findings does not mean that the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When land claimants have apparently abandoned their earlier position that the land was given to their predecessor in 1917 and now assert that the land was acquired at a later time from some person not previously mentioned in the lengthy litigation over the land, and when the Land Court rejected the testimony supporting this new theory, and thus the theory itself, as not credible, the State Court, on appeal, can detect no error in that rejection since it is primarily the Land Court=s task, and not the reviewing court=s, to assess the witnesses= credibility and resolve factual disputes and the Land Court was present during the testimony. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

Although the presence of a person=s name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person=s ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs= position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about : hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (Kos. S. Ct. Tr. 2009).

An appellate court reviews de novo questions of law, but will overturn a lower court=s factual findings only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

A trial court=s finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Simina v. Kimeuo, 16 FSM R. 616, 620, 624 (App. 2009).

A claim that a trial court=s decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

When a trial court=s decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court=s decision. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009).

The trial court need not state why it did not consider an issue or facts, it need only make a finding of such essential facts as provide a basis for the decision. The findings must be sufficiently comprehensive and pertinent to the issue to form a basis for the decision and be pertinent to its conclusions of law. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

The standard of review for findings of fact is whether the trial court=s findings are clearly erroneous. When trial court findings are alleged to be clearly erroneous, an appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. The trial court=s findings are presumptively correct. George v. George, 17 FSM R. 8, 9-10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff $6,220.52, the trial court decision did not violate the defendant=s due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A trial court=s findings are presumptively correct and findings of fact are reviewed using the clearly erroneous standard. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. George v. Albert, 17 FSM R. 25, 30 (App. 2010).

On appeal of a trial court=s Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review for findings of fact is whether they are clearly erroneous. A finding is clearly erroneous when the trial court=s factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or, if after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Peter v. Jessy, 17 FSM R. 163, 170-71 (Chk. S. Ct. App. 2010).

If an appellant alleging clear error fails to show that the trial court=s factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Because findings of fact must not be set aside unless clearly erroneous, the appellate court starts its review of a trial court=s factual findings by presuming the findings are correct. If it determines that substantial evidence supports the trial court=s findings, it does not mean that the evidence was

uncontroverted or undisputed. Rather, if the findings were adequately supported and the evidence was reasonably assessed, the findings will not be disturbed on appeal. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

The appellant=s burden to clearly demonstrate error in the trial court=s findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses= credibility, the trial court had the opportunity to view the witnesses= demeanor as they testified, while the reviewing court has not. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determines the trial court=s findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff=s burden of proof. The trial court=s answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

When, given the trial court=s wide discretion in weighing the credibility of evidence, there is credible evidence to support the trial court=s findings, the appellate court will reject an argument that the trial court=s legal conclusions were erroneous because the trial court=s factual findings are not supported by credible evidence. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A trial court=s grant or refusal to adopt an expert=s opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court=s legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee=s rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee=s rights of appeal, which is the opportunity to be heard. When the trial court=s findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court=s reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court=s findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court=s factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court=s findings were clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

The appropriate standard of review cannot be applied to an appellant=s assertions of fact when she does not identify which of the trial court=s findings were not supported by substantial evidence and when she does not explain or analyze how those findings were not supported by the testimony elicited and introduced at the trial. Absent these arguments and assertions, the appellate court need not further analyze this issue. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

Although issues of law are reviewed *de novo* on appeal, the standard of review for trial court findings of fact is whether those findings are clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

A trial court=s factual findings are presumptively correct. When an appellant asserts that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei Legislature, 17 FSM R. 339, 346 (App. 2011).

When an appellant asserts that a trial court finding was erroneous but has not provided a full trial transcript, the appellate court cannot determine whether that finding is clearly erroneous or that the trial court should have made a different finding and the trial court=s findings of fact will thus remain the only facts on which the appellate court can decide the appeal. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

When an appellant challenges a trial court factual finding that is presumptively correct, in the absence of a trial transcript, that finding must stand as fact, especially when, even with a trial transcript, it would have been difficult to show that this finding was clearly erroneous. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

Absent a trial transcript, a presumptively-correct trial court finding must stand as fact. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 (App. 2011).

If an issue was actually tried and evidence on the matter admitted with the parties= implied or express consent, it must be treated as if it was raised by the pleadings and the trial court should have ruled on it and granted whatever relief, if any, the plaintiff had proven herself entitled to. But when, without a transcript, it is impossible for the appellate court to determine if the retaliation issue was actually tried with the parties= consent, express or implied, the appellate court will not consider this assignment of error because there is nothing to show that it was ever properly before the trial court since the plaintiff never sought to amend the pleadings to include it although she had ample opportunity to do so, and there is no evidence that it was ever tried by the parties= express or implied consent. Berman v. Pohnpei Legislature, 17 FSM R. 339, 350-51 (App. 2011).

The standard of review for findings of fact is whether the trial court=s findings are clearly erroneous. A trial court=s findings are presumptively correct. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

When an appellant claims that trial court findings are clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

If an appellant asserts that there was no evidence to support certain findings or that the evidence compels a different finding but has not provided a full transcript, the appellate court cannot determine that

the trial court=s findings were clearly erroneous or that the trial court should have made other findings. Thus, without a trial transcript, the appellate court will be unable to identify any trial court finding of fact as clearly erroneous, and the trial court=s findings of fact will remain the only facts on which the appeal can be decided. Berman v. Pohnpei, 17 FSM R. 360, 368 (App. 2011).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs= tightening was not the result of an officer=s conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Findings of fact will be reviewed on the clearly erroneous standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011).

A finding of actual damages is a finding of fact, and findings of fact are reviewed on the clearly erroneous standard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When the appellant never brought up the issue of actual damages in the civil rights claim at the trial level, that issue is not properly before the appellate court. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437-38 (App. 2011).

Those parts of a trial court decision that are findings of fact are reviewed on the clearly erroneous standard. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, and if, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Stephen v. Chuuk, 17 FSM R. 453, 458 (App. 2011).

Inherent within the trial court=s description that the size of the judgments is "unwieldy" is a statement of fact and the recognition that Chuuk had a limited ability to pay and although the appellate court may sympathize with the plaintiffs= frustration, it must not substitute its judgment for that of the trial court without feeling a definite and firm conviction that a mistake has been made and that these statements of fact were "clearly erroneous." Stephen v. Chuuk, 17 FSM R. 453, 460-61 (App. 2011).

The standard of review of a trial court=s factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Setik v. Ruben, 17 FSM R. 465, 471 (App. 2011).

When the appellants have submitted the trial transcript, as well as a translation, that includes numerous references by multiple witnesses to the alleged customary gift to the appellants, the appellate court, upon reviewing all the evidence in the record, including the translated transcript, is left with the definite and firm conviction that a mistake has been made, and therefore concludes that the trial court was clearly erroneous in finding that there was "no material evidence" of the customary gift. Setik v. Ruben, 17 FSM R. 465, 471-72 (App. 2011).

Since a trial court=s findings are presumptively correct, the FSM Supreme Court appellate division would need a complete translated transcript from the Kosrae Land Court before it could identify any of that court=s findings of fact as clearly erroneous or as unsupported by substantial evidence. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 505 n.2 (App. 2011).

Generally, an appellate court does not make factual findings. In re Sanction of George, 17 FSM R. 613, 616 (App. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body=s ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court=s sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court=s view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

Generally, a finding of fact, though presumptively correct, may nevertheless be reversed or vacated if a challenger proves clear error. Heirs of Mackwelung v. Heirs of Mongkeya, 18 FSM R. 12, 14 (Kos. S. Ct. Tr. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court=s finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed

on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

When it is apparent from the pleadings that genuine issues of material fact are present and when it is apparent that the trial court=s judgment included rulings on disputed factual issues, the case was not one that was appropriate for resolution by summary judgment and thus the trial court judgment must be vacated and the matter remanded for trial. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court=s findings are presumptively correct, but when trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

That the trial court found other testimony more credible than one witness=s is not a ground for reversal because the trial court was in the best position to judge the witnesses= demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court=s findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person=s consent and without the person otherwise authorizing it, Lilly Iriarte=s signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

An appellate court does not decide factual issues de novo. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

An appellate court does not make factual findings. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

The appellate standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court=s findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the trial court record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the court is left with a definite and firm conviction that a mistake has been made. It cannot substitute its judgment for that of the trial court. Kosrae v. Edwin, 18 FSM R. 507, 511-12 (App. 2013).

When the appellant does not point to any evidence in the record that would lead the appellate court to feel that a trial court finding was clearly erroneous, that trial court finding must stand. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

A trial court=s findings are presumptively correct. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143 (App. 2013).

The standard of review of trial court findings of fact is whether those findings are clearly erroneous. A trial court=s findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

An appellate court cannot substitute its judgment for that of the trial court. Smith v. Nimea, 19 FSM R. 163, 169 (App. 2013).

A trial court=s "findings" are the facts as found. To be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Due regard must be given to the trial judge=s opportunity to weigh the witnesses= credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court=s task to assess the witnesses= credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court=s task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A finding is clearly erroneous when the reviewing court is left with the definite conviction that a mistake had been committed. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court=s finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant=s repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Since a trial court=s findings are presumptively correct, any challenged findings of fact will be reviewed on a clearly erroneous standard. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 300-01 (App. 2014).

When the appellant does not challenge the trial court=s factual findings about the lack of notice or the improper makeup of the land registration team, those trial court findings of fact must stand. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court=s findings are presumed correct. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

When trial court findings are alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made, but the appellate court cannot substitute its judgment for that of the trial court. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

A trial court=s finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

To be clearly erroneous, a decision must strike the court as more than just maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014).

The trial court=s conclusion upholding an employee=s termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

An appellant=s failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm=n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Case law mirrors Kosrae State Code ' 11.614(5)(d)=s statutory directive, in that the State Court=s review must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. The standard of appellate review regarding sufficiency of the evidence, is very limited; only findings that are clearly erroneous can be set aside. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and consists of more than a scintilla of evidence but may be less than a preponderance. The Kosrae State Court, when reviewing a Land Court decision, applies the substantial evidence rule and does not determine where, in its view, the preponderance of the evidence lies but must determine if the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the State Court must affirm the Land Court decision even if the evidence would not, in its view, amount to a preponderance of the evidence and even if it would have decided it differently. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

The standard of review, concerning a trial court=s findings of fact, is whether such determination is clearly erroneous. Since a trial court=s findings are presumptively correct, when trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court=s factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 20 FSM R. 178, 184-85 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

The standard of review to be utilized by the FSM Supreme Court appellate division, when scrutinizing a Kosrae State Court decision, which in turn reviewed a Land Court decision, is whether the former abused its discretion, to wit: did the State Court fail to properly apply its standard of review in this particular case. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed. If findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal since the reviewing court should not substitute its judgment for the lower court=s well-founded findings. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

In determining whether a factual finding is clearly erroneous, an appellate court must review the evidence in a light most favorable to the appellee and will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the demeanor of the witnesses, alongside their respective testimony. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

A party=s insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

An appellate court cannot say that the trial court=s finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness=s testimony and not the other=s and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court=s conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

If the appellate court, after having pored over all the evidence in the record, is left with a firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

When one can safely deduce from the Kosrae State Court=s memorandum of decision that it found that substantial evidence was propounded in the Land Court to support that court=s decision and as a result, affirmed same, and when the FSM Supreme Court appellate division was afforded the opportunity to review each side=s appellate briefs as well as entertain oral argument, it similarly ruled that the Kosrae State Court decision affirming the Land Court=s ruling was accurate, given a meticulous review of the entire evidence and resultant absence of a definite/firm conviction that any mistake has been committed. Ittu v. Ittu, 20 FSM R. 178, 186-87 (App. 2015).

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and, except for the official record, no evidence or testimony is considered at the appeal hearing. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 192-93 (App. 2015).

The standard of review, concerning a trial court=s findings of fact, is whether such determination is clearly erroneous. A trial court=s findings are presumptively correct. When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court=s factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193-94 (App. 2015).

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

An appellate court, in determining whether a factual finding is clearly erroneous, must review the evidence in a light most favorable to the appellee. The reviewing court will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the witnesses= demeanor, alongside their respective testimony. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When, after having pored over all the evidence in the record, the appellate court is left with the firm conviction that a mistake has been made, it may then conclude that the trial court finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

When the FSM Supreme Court determines the Kosrae State Court decision contained a sufficiently comprehensive analysis, referencing the factors taken into consideration in formulating its ruling and when one can safely deduce from the Kosrae State Court=s memorandum of decision that it found substantial evidence propounded in the Land Court to support its decision and therefore affirmed same, the FSM Supreme Court appellate division will find that the Kosrae State Court decision, affirming the Land Court ruling, was accurate, given a fastidious review of the entire evidence and resultant absence of a definite/firm conviction that any mistake had been committed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 194 (App. 2015).

A determination that substantial evidence supports the finding, does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

A reviewing court will take every precaution not to second guess a trial court=s finding of fact because, when the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court=s finding of fact, which an appellate court should not set aside. When there is credible evidence in the record to support that finding, in part because the trial court has the opportunity to view the witnesses and the manner of their testimony, the reviewing court should not substitute its judgment for the lower court=s well-founded findings. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

An appellate court cannot say that the trial court=s finding was clearly erroneous when it was the result of weighing conflicting evidence. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the trial judge believed one witness=s testimony and not the other=s and gave an extensive analysis of the testimony before it that led to that conclusion, there is no reason for the appellate court to

disturb this conclusion, as it was supported by credible evidence and the trial court had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195 (App. 2015).

When the Kosrae State Court=s memorandum of decision contained a detailed analysis which cogently recapped the aggregate testimony from the Land Court and thoroughly reviewed the record, including the Land Registration Team=s finding of fact and was privy to the appellants= appellate brief and when that court undertook a painstaking review to substantiate its respective ruling, its memorandum of decision was sufficiently comprehensive to refute the appellants= position. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 195-96 (App. 2015).

An appellants= claim that a lower court decision did not address all the issues raised, is not a basis for remand, as long as the decision denotes the essential facts that provide a basis for such ruling. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The test, with respect to the adequacy of the findings, is whether they are sufficiently comprehensive and pertinent to the issue, in terms of formulating a basis for the decision. A court need not state why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for the decision. Simply because the Kosrae State Court=s memorandum of decision did not specifically articulate why sundry "essential facts" cited by the appellants= brief were insufficient to sway that court, does not necessarily imply they were ignored. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).

The standard of review for trial court findings of fact is whether those findings are clearly erroneous. A trial court=s findings are presumed correct, and the appellate court cannot substitute its judgment for that of the trial court. When a trial court finding is alleged to be clearly erroneous, the appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, it is left with a definite and firm conviction that a mistake has been made. Alexander v. Hainrick, 20 FSM R. 377, 381 (App. 2016).

That the trial court found one witness=s testimony more credible than another=s, is not a ground for reversal since the trial judge was in the best position to judge the witnesses= demeanor and credibility by observing them and the manner in which they testified. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

The standard of review for trial court factual findings is whether those findings are clearly erroneous since trial court findings are presumed correct and the appellate court will not substitute its judgment for the trial court=s. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

When an appellant claims that a trial court finding is clearly erroneous, an appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

That the trial court found one witness=s testimony more credible than another=s is not a ground for reversal because the trial court was in the best position to judge the witnesses= demeanor and credibility since the trial judge was able to observe the witnesses and the manner in which they testified. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426, 427 (App. 2016).

The appellate court may disregard an assignment of error that a factual finding was clearly erroneous when, even if the finding was clearly erroneous, it would not affect the case=s outcome. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

When the trial judge was able to observe the witnesses while they testified and the trial judge found one witness=s testimony more credible than another=s and analyzes why, the appellate court will not disturb that finding if it is supported by credible evidence in the record since the trial judge had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

The appellate court will usually not hold a trial court finding clearly erroneous when it was the result of weighing conflicting evidence. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

A court determines that a finding is clearly erroneous when, although there is some evidence to support it, the reviewing court examines all the evidence and is left with the definite and firm conviction, that a mistake has been committed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 26 (App. 2016).

Simply because, when the trial court denied the imposition of Rule 11 sanctions on the bank=s attorney, it did not specifically articulate its reasoning for not imposing Rule 11 sanctions on the bank, does not necessarily imply that due consideration was lacking, in terms of such a prospect. A trial court need not state why it did not consider an issue or fact, it need only make a finding of such essential facts, as provide for a basis for the decision. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

When there was more than ample evidence that the bank, as well as its attorney, conducted due diligence and thereby, reasonable inquiry into the documents= signatories, an appellate court should be reluctant to substitute its judgment for that of the trial judge. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 28 (App. 2016).

With respect to an allegation that a decision is clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record, or 2) the trial court=s factual finding was the result of an erroneous conception of the applicable law, or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a firm conviction that a mistake has been made. In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week old unrefrigerated dead fish. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

The test to be utilized in determining the adequacy of findings and thus the sufficiency of evidence, is whether they are comprehensive and pertinent to the issue at hand, in terms of formulating a sound basis for the decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Determining when documents were submitted is purely a factual determination more suited for a trial court. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

If, after poring over all the evidence in the record, the appellate court is left with a firm conviction that a mistake has been made, it may then conclude that the finding was erroneous, but it cannot substitute its judgment for that of the trial court. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

A trial court=s findings are presumptively correct. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

When the trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record or 2) the trial court=s factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the

appellate court is left with a definite and firm conviction that a mistake has been made. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

In order to be clearly erroneous, a decision must strike the appellate court as more than maybe or probably wrong; it must strike the court as wrong with the force of a five-week-old unrefrigerated dead fish. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118 (App. 2017).

Substantial evidence is evidence which a reasonable mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence, but less than a preponderance. A court, reviewing a claim that substantial evidence is lacking, cannot substitute its judgment for that of the trial court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 118-19 (App. 2017).

When an appellate court finds nothing that contradicts a Trust Territory High Court judgment previously rendered on the issue of ownership of the land in question and the state court decision is based solely on the prior High Court decision, the trial court will be affirmed. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

The trial court need not say why it did not consider an issue or fact; it need only make a finding of such essential facts as provide a basis for its decision. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120 (App. 2017).

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A trial court=s findings are presumptively correct, and are reviewed using the clearly erroneous standard. When trial court findings are alleged to be clearly erroneous, the appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, we are left with a definite and firm conviction that a mistake has been made. Gallen v. Moylan=s Ins. Underwriters (FSM) Inc., 21 FSM R. 380, 384 (App. 2017).

A trial court=s findings are presumptively correct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

When trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only: 1) if the trial court findings were not supported by substantial evidence in the record; or 2) if the trial court=s factual finding was the result of an erroneous conception of the applicable law; or 3) if after reviewing the entire body of evidence and construing the evidence in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

To be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

The question of whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff=s burden of proof is a question of law, and issues of law are reviewed de novo on appeal. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 531 (App. 2018).

Any purportedly erroneous trial court finding about specific boundary lines= accuracy of the lot are safely ameliorated as harmless error, when the plaintiff=s proffer of evidence was inadequate to show

that it would have developed this lot during the divested five-month period of its respective lease. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

The test to be utilized in determining the adequacy of findings (and the sufficiency of evidence) is whether they are comprehensive and pertinent to the issue at hand, in formulating a sound basis for the decision. The trial court need not state why it did not consider an issue or facts; it need only make a finding of such essential facts as provide a basis for the decision. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

The issue of waiver is a mixed question of law and fact for which an appellate court uses a de novo review for the law and the clearly erroneous standard for the facts. Alik v. Heirs of Alik, 21 FSM R. 606, 616 (App. 2018).

The standard of review of a trial court=s factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 79-80 (App. 2018).

Generally, appellate courts do not make factual findings. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018).

To the extent an appellant contests the trial court=s findings of fact as clearly erroneous, an appellate court can only find reversible error when 1) the trial court findings were not supported by substantial evidence in the record; 2) the factual findings were the result of erroneous conception of the applicable law; or 3) after reviewing the entire body of evidence and construing the evidence in the light most favorable to the appellee, we are left with a definite and firm conviction that a mistake has been made. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

An appellate court cannot hold the trial court=s findings as clearly erroneous when the decision was the result of weighing conflicting evidence. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

A trial court=s findings are presumptively correct. Thus, in order for a factual finding to be clearly erroneous, the decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old unrefrigerated dead fish. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

Once the facts are found, that are not determined to be clearly erroneous, the question becomes whether those facts were sufficient evidence to meet the burden of proof, which is a question of law measured by the abuse of discretion standard. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

When reviewing an appeal from a Land Court decision, the Kosrae State Court uses the "substantial-evidence rule" to review the Land Court=s factual findings, and otherwise determines whether that decision was contrary to law, and, if the Land Court decision is ultimately appealed to the FSM Supreme Court appellate division, the FSM Supreme Court will use the same standard of review. Heirs of Sigrah v. George, 22 FSM R. 211, 216 (App. 2019).

The Chief Justice=s use of another case as evidence is improper because he was sitting as an appellate court with its terms of review set by statute, and that statute provided that no evidence or testimony can be considered at the appeal hearing except the official record, transcripts, and exhibits received at the Land Court hearing, since the Chief Justice considered evidence that the statute prohibited him from considering, unless that evidence was part of the Land Court record or is only being cited for a principle of law. Heirs of Sigrah v. George, 22 FSM R. 211, 219 (App. 2019).

When reviewing a trial court=s Rule 41(b) dismissal on sufficiency of the evidence, the appropriate

standard of review is whether the findings of fact are clearly erroneous. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

When an appellant takes issue with both the trial court=s findings of fact and its subsequent dismissal order, it requires a two-tier analysis. The appellate court first reviews the trial court=s findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

Issues of fact are reviewed under the clearly erroneous standard. FSM v. Kuo Rong 113, 22 FSM R. 515, 519 (App. 2020).

Since an appellate court does not set aside findings of fact unless they are clearly erroneous, it starts its review of a trial court=s factual findings by presuming the findings are correct, and, if it determines that substantial evidence supports the trial court findings, it will not disturb those factual findings on appeal. But even then, if the appellate court does not disturb the facts, as found, it must ask whether those factual findings are sufficient to meet the plaintiff=s burden of proof. Since the trial court=s answer to that question is a legal conclusion and thus a ruling on a point of law, the appellate court reviews that conclusion de novo. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 612, 619 (Chk. S. Ct. App. 2020).

– Standard – Criminal Cases

The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Engichy v. FSM, 1 FSM R. 532, 546 (App. 1984).

An appellate court should not overrule or set aside a trial court=s finding of fact where there is credible evidence in the record to support that finding. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

The trial court=s findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Engichy v. FSM, 1 FSM R. 532, 557 (App. 1984).

The appellate process contemplates that any issue brought before an appellate court will first have been ruled upon by a trial judge. Loch v. FSM, 2 FSM R. 234, 236 (App. 1986).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. In the absence of an objection in the trial court the appellate division will refuse to consider the issue. Loney v. FSM, 3 FSM R. 151, 154 (App. 1987).

For false evidence to lead to reversal of a conviction, there must be some reason to believe that the trier of fact may have been misled and that this may have contributed to the conviction. Bernardo v. FSM, 4 FSM R. 310, 314 (App. 1990).

In a criminal case, the task of an appeals court is to determine whether the trier of fact could reasonably have been convinced of the charge beyond a reasonable doubt by the evidence. Tosie v. FSM, 5 FSM R. 175, 178 (App. 1991).

The test on appeal is not whether the appellate court is convinced beyond a reasonable doubt, but whether the trial court acting reasonably is convinced. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

An issue raised in closing argument at trial can be properly brought before the appellate court. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

In reviewing a criminal conviction on appeal the appellate court need not go beyond the standard of review in Engichy v. FSM, 1 FSM R. 532, to require that the test be whether the trier of fact could reasonably conclude that the evidence is inconsistent with every hypothesis of innocence. Jonah v. FSM, 5 FSM R. 308, 310-11 (App. 1992).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

An issue not raised at trial cannot be introduced for the first time on appeal. Alfons v. FSM, 5 FSM R. 402, 404 (App. 1992).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM R. 293, 296 (App. 1993).

In an appeal of a criminal conviction, before the appellate court can conclude that a trial court error was harmless, the court must conclude that it was harmless beyond a reasonable doubt. Yinmed v. Yap, 8 FSM R. 95, 99 (Yap S. Ct. App. 1997).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM R. 203, 206 (App. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

When facts not controverted are admitted, or have been assumed by both parties, the failure to make findings thereof does not necessitate a remand. Nelson v. Kosrae, 8 FSM R. 397, 403-04 (App. 1998).

In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

An issue of whether there was any testimony presented to show that the defendant was threatened by imminent unlawful bodily harm would not really be an issue since even if there was such testimony, the issue is whether the trial court could have reasonably found that other contrary testimony was more credible or carried more weight. Neth v. Kosrae, 14 FSM R. 228, 232 n.1 (App. 2006).

In a criminal case, the appellate court=s responsibility is to determine whether the trier of fact could

reasonably have been convinced beyond a reasonable doubt by the evidence presented. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt, but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had the right to believe and accept as true. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The appellate court=s obligation is to review the evidence in the light most favorable to the trial court=s factual determinations. The standard of review extends to inferences drawn from the evidence as well. The trial court=s findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When the defendant raised as a ground for his motion to recuse the trial judge that the trial judge participated in the plea negotiations, in violation of Kosrae Criminal Procedure Rule 11(e)(1), although the defendant did not argue that the trial court=s involvement in plea discussions violation warranted vacation of his conviction, (only that it warranted recusal), the issue was not forfeited. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When the trial court issued findings of guilt for the defendant=s violation of both 11 F.S.M.C. 532 and 11 F.S.M.C. 701, but only entered a conviction for his violation of 11 F.S.M.C. 701 and thereafter, the defendant was sentenced to a term of one year in jail, again, only for his conviction of 11 F.S.M.C. 701, the trial court=s finding of guilt for the defendant=s violation of 11 F.S.M.C. 532 is not at issue in the appeal. Wainit v. FSM, 15 FSM R. 43, 46 n.2 (App. 2007).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

An appeal from an order denying bail is to be determined upon such papers, affidavits, and portions of the record as the parties present, including any statement of the reasons of the court appealed from explaining the denial of release, or conditions. Nedlic v. Kosrae, 15 FSM R. 435, 437, 438 (App. 2007).

The standard of review for an appeal from an order denying bail is that the reviewing court will undertake an independent review of the detention decision, giving deference to the trial court=s determination, and, if, after its independent review of the facts and the trial court=s reasons, the appellate court concludes that the trial court should have reached a different result, then the reviewing court may amend or reverse the detention order, but if the appellate court does not reach such a conclusion – even if it sees the decisional scales as evenly balanced – then the trial judge=s determination should stand. Nedlic v. Kosrae, 15 FSM R. 435, 437-38 (App. 2007).

When, after the appellate court=s independent review of all of the matter which it is entitled to consider under FSM Appellate Rule 9(a), along with the trial court=s statement of its reasons for setting bail in the amount it did, the appellate court cannot conclude that the trial court should have reached a different result, the appellants= motions to overturn the trial court bail orders will therefore be denied. Nedlic v. Kosrae, 15 FSM R. 435, 438-39 (App. 2007).

When a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice and the party makes the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is

with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in reaching its guilty verdict. Engichy v. FSM, 15 FSM R. 546, 558-59 (App. 2008).

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Constitutional constraints would bar the appellate reversal of a not guilty finding since both the FSM Constitution and the Kosrae Constitution protect an accused from being twice put in jeopardy for the same offense. Kosrae v. Benjamin, 17 FSM R. 1, 3 (App. 2010).

Under the Kosrae Code, government appeals from the Kosrae State Court in a criminal proceeding are limited to only when the Kosrae State Court has held a law or regulation invalid, and the appellate court may then reverse determination of invalidity of a law or regulation. No other Kosrae statute specifically authorizes a prosecution appeal. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Since the Kosrae Code only provides for an appeal in a criminal proceeding by the government only when the Kosrae State Court has held a law or regulation invalid, it does not authorize prosecution appeals from an adverse legal ruling construing a statute, such as when the Kosrae State Court did not hold the applicable statute of limitations invalid (it remains in effect) but interpreted it in a manner that the prosecution disagreed with and which terminated the prosecution. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

Although many jurisdictions authorize prosecution appeals when a trial court=s interlocutory pretrial order effectively terminates the prosecution, either because vital evidence is suppressed or because the court dismisses the case based solely on a pretrial legal ruling, the Kosrae Code does not authorize such appeals. Kosrae v. George, 17 FSM R. 5, 7 (App. 2010).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

The standard of review for a criminal contempt conviction, as for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

– Standard – Criminal Cases – Abuse of Discretion

Normally the trial court fashions the remedies and sanctions for a party=s failure to comply with discovery requirements. The exercise of the trial court=s discretion should not be disturbed by an appellate court absent a showing that the trial court=s action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM R. 532, 558 (App. 1984).

Normally the trial court fashions the remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court=s discretion should not be disturbed by an appellate court absent a showing that the trial court=s action has unfairly resulted in substantial hardship and prejudice to a party. Bernardo v. FSM, 4 FSM R. 310, 313 (App. 1990).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion

resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). Yalmad v. FSM, 5 FSM R. 32, 34 (App. 1991).

The trial court=s denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court=s underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

A trial court abuses its discretion when it renders a decision that is clearly unreasonable, arbitrary, or fanciful, based on an erroneous conclusion of law, or unsupported by the evidence. Kinere v. Kosrae, 14 FSM R. 375, 382 (App. 2006).

When the trial court asked the government to redact the other defendants= names from one co-defendant=s affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government=s failure to provide a redacted copy of the statement, that choice was within the trial court=s discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

An abuse of discretion occurs when 1) the court=s decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court=s findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. The burden is on the appellant to show an abuse. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

For purposes of review, the trial court has substantial discretion in deciding questions concerning the admissibility of evidence. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court=s review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie showing as to the documents= authenticity. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

The standard of review of a trial court=s decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions= protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge=s decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

While the FSM Supreme Court appellate division has no authority to waive or extend Rule 4=s time requirements or to grant a motion to extend time to appeal, a lower court=s grant or denial of an

extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Gleason v. Pohnpei, 19 FSM R. 283, 284 (App. 2014).

– Standard – Criminal Cases – Clearly Erroneous

A conviction for robbery is a finding which can only be reversed if the court=s finding is clearly erroneous. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant=s guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court=s factual determination. A trial court=s factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Palik v. Kosrae, 8 FSM R. 509, 516 (App. 1998).

A conviction of a crime can only be reversed if the court=s finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court=s factual determination. A trial court=s factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court=s conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant=s actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

The trial court=s denial of the Rule 32(d) motion to withdraw his guilty plea is reviewed for an abuse of discretion and the trial court=s underlying factual findings are reviewed for clear error. Kinere v. Kosrae, 14 FSM R. 375, 381 (App. 2006).

When the appellate court is asked to review the trial court=s legal conclusion that the Kosrae DUI statute was constitutional, the appellate court will restate the issue as, whether the trial court correctly concluded that, as a matter of law, Kosrae State Code Section 13.710 is not void for vagueness since "clearly erroneous" is applied on appeal to findings of fact made by the trial court in civil cases. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

The standard of review of a trial court=s factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge, and because findings of fact must not be set aside unless clearly erroneous, an appellate court starts its review of a trial court=s factual findings by presuming the findings are correct. The appellant=s burden to clearly demonstrate error in the trial court=s findings is especially strong when the findings are based upon oral

testimony because, before reaching its conclusions as to the witnesses= credibility, the trial court had the opportunity to view the witnesses= demeanor as they testified, while the reviewing court has not. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

An appellate court cannot say that a trial court=s finding was clearly erroneous when it was the result of weighing conflicting evidence because an appellate court will not reweigh the evidence presented at trial, and since credibility determinations are uniquely the province of the factfinder, not the appellate court. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

An appellate court should not overrule or set aside a trial court=s finding of fact when there is credible evidence in the record to support that finding. The trial court=s findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. The exercise of the trial court=s discretion should not be disturbed by an appellate court absent a showing that the trial court=s action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

The standard of review of a trial court=s findings is whether those findings are clearly erroneous. In making this determination, the appellate court must view the evidence in the light most favorable to the appellee, and if, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court=s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. The trial court=s findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

– Standard – Criminal Cases – De Novo

The question of whether a municipality has the legal authority to impose license fees or taxes solely as a revenue measure is a pure question of law, and on appeal, questions of law are reviewed *de novo*. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

If, as a matter of law, a state statute preempts any local regulation of the possession and sale of alcoholic beverages, and if the municipality is also precluded from imposing license fees or taxes for revenue purposes only, a municipal conviction for possession and sale without a municipal license must be overturned and the defendant found not guilty of the infraction as a matter of law. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 (Chk. S. Ct. Tr. 2004).

In order for the defendant to prevail on appeal, it is necessary to determine whether a municipality has the constitutional or statutory authority to raise revenue by imposing licensing fees and taxes on businesses that engage in alcoholic beverage sales even though the municipality did not raise the issue of its power to impose business license fees or taxes for revenue, rather than regulatory purposes because, as a general rule, a lower court decision will not be reversed if based upon any proper ground. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

On appeal, issues of law are reviewed de novo. Wainit v. FSM, 15 FSM R. 43, 48 (App. 2007).

On appeal, the appellate court reviews issues of law de novo. Phillip v. Kosrae, 15 FSM R. 116, 119

(App. 2007).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court=s determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

All issues of law are reviewed *de novo* on appeal. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

Whether, as a matter of law, a variance between the FSM=s allegations and the evidence adduced at trial and relied upon by the trial court in its findings unfairly prejudiced the accused, is an issue reviewed *de novo*. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

Issues of law are reviewed de novo. Lee v. Kosrae, 20 FSM R. 160, 164 (App. 2015).

– Standard – Criminal Cases – Plain Error

The appellate court may notice error, even though not properly raised or preserved in the trial court, where the error affects the substantial rights of a minor under the particular circumstances of a case. In re Juvenile, 4 FSM R. 161, 164 (App. 1989).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Appellate courts may notice plain error where the error affects the substantial rights of the defendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 477 (App. 1996).

Generally, when a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant=s constitutional rights has occurred, the court may notice that error on its own. An appellate court may notice plain error when the error affects a criminal defendant=s substantial rights. Nena v. Kosrae, 14 FSM R. 73, 77 (App. 2006).

Under the constitutional guarantee of a public trial, an accused and the public both have a constitutional right that the court=s finding be announced publicly in open court with the accused present. This is true whether the finding is guilty or not guilty. Violation of this constitutional protection is not subject to a harmless error analysis and the defendant need not show any prejudice. Nena v. Kosrae, 14 FSM R. 73, 78 (App. 2006).

When a criminal defendant has failed to raise and preserve an issue, he has waived his right to object, but when a plain error that affects the defendant=s constitutional rights has occurred, the court may notice the error on its own. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

An appellate court may notice plain error when the error affects a criminal defendant=s substantial rights. The plain error exception also applies when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

Violation of the constitutional public trial right is not subject to a harmless error analysis and the defendant need not show any prejudice. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When, after the trial court had taken the case under advisement, it made its finding of guilt in writing and the written finding was then served on counsel and there was never an oral in-court pronouncement of guilt beforehand, and when, following the sentencing hearing, there was no public imposition of

sentence in open court, only a later written sentencing order served on counsel, an appellate court must vacate the finding because it was improperly entered since there was no public finding of guilt. Neth v. Kosrae, 14 FSM R. 228, 232 (App. 2006).

When an issue has been forfeited through failure to raise and preserve the issue, an appellate court may address it only when there has been a plain error affecting the defendant=s constitutional rights; or when the error affects a criminal defendant=s substantial rights; or when the error is obvious and substantial and seriously affects the fairness, integrity, or public reputation of judicial proceedings. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

When an issue is not raised in the appellate briefs or oral argument, the appellate court should (but not must) exercise its discretion to notice a forfeited error if that error seriously affects the judicial proceeding=s fairness, integrity, or public reputation. Kinere v. Kosrae, 14 FSM R. 375, 387 (App. 2006).

The standard of review of a trial court=s decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions= protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge=s decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The appellate court may notice plain error when the error affects a criminal defendant=s substantial rights, such as his right of allocution. Benjamin v. Kosrae, 19 FSM R. 201, 206-07 & n.2 (App. 2013).

Under the plain error doctrine, when a criminal defendant has failed to raise an issue in the trial court and preserve it for appeal, he has generally waived his right to object; but if a plain error that affects the defendant=s constitutional rights has occurred, the appellate court may notice that error on its own. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

If an appellant=s assignment of error is indeed a plain error, the appellate court should not be precluded from considering it merely because the appellant directed it to the appellate court=s attention before the appellate court itself noticed it. Wolphagen v. FSM, 22 FSM R. 96, 101 (App. 2018).

– Standard – Criminal Cases – Sentence

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence is appropriate. Malakai v. FSM, 1 FSM R. 338, 338 (App. 1983).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM R. 266, 274 (App. 1990).

If the trial court based the sentence upon the defendant=s background and potential, and the nature of the offense, such individualized sentencing decision would be entitled to the deference accorded to findings of fact. Cheida v. FSM, 9 FSM R. 183, 187 (App. 1999).

In a criminal case, the appellate court may commute, reduce, or suspend the execution of sentence, but when the appellate court has held that the trial court did not abuse its discretion in considering and imposing its sentence on the defendant for the offense committed, it will find no way to commute, reduce, or suspend the sentence. Cheida v. FSM, 9 FSM R. 183, 190 (App. 1999).

A criminal sentence may be affirmed when a review of the record reveals that the sentence is

appropriate, and, if the trial court based the sentence upon the defendant=s background and potential, and the nature of the offense, such an individualized sentencing decision would be entitled to the deference accorded to findings of fact. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

The standard of review of a trial court=s decision to impose consecutive sentences is de novo review when the issues raised are the questions of law – whether an offense is a lesser included offense of another offense; whether a sentence violates the FSM and Kosrae Constitutions= protections against double jeopardy; and whether the rule of lenity should apply in construing a statute. Otherwise, the review of a judge=s decision to impose concurrent or consecutive sentences is generally limited to review for abuse of discretion. Benjamin v. Kosrae, 19 FSM R. 201, 205 (App. 2013).

In reviewing a trial court=s sentencing decision, the standards generally applied in criminal appeals are followed – findings of fact that are supported by credible evidence are upheld but those legal rulings with which the appellate court disagrees are overruled since issues of law are reviewed de novo. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The better practice is for the trial court to impose sentence on each count individually and to indicate on the record whether the sentences are to run concurrently or consecutively. Such a sentence facilitates appellate review, and obviates the need for the appellate court to review the entire sentence=s propriety in the event any count underlying a general sentence is vacated. Thus, if any part of a conviction is reversed on appeal, the sentence imposed under the valid count would not have to be disturbed. Ned v. Kosrae, 20 FSM R. 147, 155 (App. 2015).

– Standard – Criminal Cases – Sufficiency of Evidence

In considering challenges that there was insufficient evidence to justify the trial court=s findings that the defendant aided and abetted, and is therefore criminally liable for the assaults with dangerous weapons, the FSM Supreme Court recognizes its appellate tribunal=s obligation to review the evidence in the light most favorable to the trial court=s factual determinations. The standard of review extends to inferences drawn from the evidence as well. Engichy v. FSM, 1 FSM R. 532, 545 (App. 1984).

The standard to be applied in reviewing a trial court=s finding of intention to kill is not whether the appellate court is convinced that there was intention to kill but whether the appellate court believes that the evidence was sufficient to persuade a reasonable trier of fact beyond a reasonable doubt of the intention to kill. Loch v. FSM, 1 FSM R. 566, 575-76 (App. 1984).

Standard to be applied in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Runmar v. FSM, 3 FSM R. 308, 315 (App. 1988).

In reviewing the sufficiency of evidence to warrant conviction, the issue is whether the evidence, viewed in a light most favorable to the finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. Welson v. FSM, 5 FSM R. 281, 285 (App. 1992).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is whether the appellate panel, in considering the evidence in the light most favorable to the trial court=s findings of fact, determines that a reasonable trier of fact could be convinced of the defendant=s guilt beyond a reasonable doubt. Alfons v. FSM, 5 FSM R. 402, 405 (App. 1992).

In reviewing a criminal conviction against an insufficiency of the evidence challenge, the appellate court must ask whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. Nelson v. Kosrae, 8 FSM R. 397, 401

(App. 1998).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant=s guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court=s factual determination. A trial court=s factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM R. 509, 512 (App. 1998).

Insufficiency of the evidence argument is not available to criminal appellants when a transcript of all evidence relevant to such finding or conclusion is not included in the record on appeal. Iwenong v. Chuuk, 8 FSM R. 550, 551 (Chk. S. Ct. App. 1998).

When an appellant has failed to provide a transcript of the relevant evidence and failed to identify the portions of the record that support his argument, he has failed to demonstrate that the trial court has erred as a matter of law in imposing sentence, and the presumption is that the evidence was sufficient to sustain the trial court=s judgment. Cheida v. FSM, 9 FSM R. 183, 189 (App. 1999).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court=s factual determination. A trial court=s factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court=s conclusions of law. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant=s actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

In a criminal appeal, the appropriate standard of review for sufficiency of the evidence questions is whether, reviewing the evidence in the light most favorable to the trial court=s determinations of fact, there is sufficient evidence to convince a reasonable trier of fact of the defendant=s guilt beyond a reasonable doubt. Yow v. Yap, 11 FSM R. 63, 65 (Yap S. Ct. App. 2002).

In reviewing the sufficiency of evidence to warrant conviction, the issue before an appellate court is whether the evidence, viewed in a light most favorable to the trial court=s finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. The appellate court must be able to conclude that no trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. A trial court=s factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A conviction of a crime can only be reversed if the court=s finding is clearly erroneous. The appellate standard of review on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Moses v. FSM, 14 FSM R. 341, 344 (App. 2006).

When there is ample evidence in the record to support the trial court=s finding, the appellate court will conclude that there is sufficient evidence in the record for a reasonable trier of fact to find beyond a reasonable doubt that appellant used none of the national government funds allotted to him for the

construction of a new community hall. Moses v. FSM, 14 FSM R. 341, 345 (App. 2006).

Issues of law are reviewed de novo. The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court=s determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Tulensru v. Kosrae, 15 FSM R. 122, 125 (App. 2007).

In the appeal of a criminal matter, when considering challenges of insufficient evidence to justify the trial court=s findings, an appellate tribunal is obligated to review the evidence in the light most favorable to the trial court=s factual determinations and this standard of review extends to inferences drawn from the evidence as well. The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court need not conclude that the evidence is inconsistent with every hypothesis of innocence in order to affirm the conviction. Engichy v. FSM, 15 FSM R. 546, 552 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant=s affidavit against the other defendants and when the trial court, in its special findings made at the trial=s conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant=s affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants= participation in the conspiracy wholly independent of and detached from the one co-defendant=s affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant=s affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When credible evidence in the record supports the trial court=s findings and presents a coherent, believable, overall picture and when, after reviewing the entire record on appeal in the light most favorable to the trial court=s factual determinations and inferences, the appellate court finds there is sufficient evidence to support the trial court=s findings of guilt beyond a reasonable doubt, the appellants= convictions will be affirmed. Engichy v. FSM, 15 FSM R. 546, 559 (App. 2008).

The standard of review applied to sufficiency of the evidence challenges in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court=s determinations of fact, there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. This standard of review extends to inferences drawn from the evidence as well. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

While appellate panels must always show deference to the inferences and conclusions drawn by a trial judge from evidence, this deference seems even greater in the context of a conspiracy trial, in which the trial judge is likely looking for the proverbial "wink and nod" that often ties a conspiracy together. It is with such considerable deference that an appellate court reviews the evidence explicitly relied upon by the trial court in finding the defendants guilty. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010).

Appellate review of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The standard of review applied to a sufficiency-of-the-evidence challenge in a criminal case is whether, in reviewing the evidence in the light most favorable to the trial court=s determinations of fact,

there is sufficient evidence to convince a reasonable trier of fact, relying on evidence which it had the right to believe and accept as true, that the defendant is guilty beyond a reasonable doubt. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

A factual finding will not be set aside when there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

To be clearly erroneous, a decision must be more than just maybe or probably wrong; it must be wrong with the force of a five-week-old unrefrigerated dead fish. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

An appellant cannot pass the sufficiency-of-the-evidence test when it is evident that the victim=s testimony provided substantial evidence that the trial court found credible and reliable; when the trial judge recited credible, substantial evidence to support the guilty finding; when the trial judge had the opportunity to view the witnesses and the manner of their testimony and chose to believe as credible the victim=s testimony, which the judge had the right to believe and accept as true, and to reject the defendant=s own testimony. Ned v. Kosrae, 20 FSM R. 147, 152 (App. 2015).

The prosecution, by proving sexual assault, also proved that the accused annoyed or disturbed the victim and that he caused her bodily harm so that, just as there was sufficient evidence to find him guilty of sexual assault, there was also sufficient evidence to find him guilty of the other lesser offenses. Ned v. Kosrae, 20 FSM R. 147, 153 (App. 2015).

– Stay – Civil Cases

A motion to the state appellate division to stay state trial court proceedings pending appellate court issuance of a promised detailed written opinion explaining appellate denial of an earlier petition for writ of mandamus against the trial judge is denied where: 1) there was no presently scheduled proceeding to take place at the trial level although the trial judge had instructed the parties to be prepared to proceed if the writ was denied; 2) an appellate opinion is to be written informing the parties of the reasons for dismissal of the petition for writ of mandamus; 3) the constitutional issues of first impression were resolved in the denial of the writ; 4) a matter that has been ruled upon and completed such that no other action is required except for the issuance of an opinion will not support a motion to stay on the appellate level; and 5) no motion to stay had been requested of the trial court. Etscheit v. Adams, 4 FSM R. 242, 244 (Pon. S. Ct. App. 1990).

When an appellant has applied to the appellate division for a stay it normally will be considered by all justices of the appellate division, but in exceptional cases application may be made to and considered by a single justice. The power of the appellate division or a single justice thereof to stay proceedings during the pendency of an appeal is not limited by the Rules of Civil Procedure. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 222 (App. 1993).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 276-77 (Pon. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party=s rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The criteria for granting a stay pending appeal under Rule 62 are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be

served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277-78 (Pon. 1993).

When summary judgment is granted enjoining trespassing farmers, removing the farmers from the land while their appeal is pending might more substantially alter the status quo than a stay allowing them to remain on the land. Ponape Enterprises Co. v. Luzama, 6 FSM R. 276, 278 (Pon. 1993).

A stay on appeal may be granted even when the moving party has less than a 50% chance of success if the question is a difficult one, or an issue of first impression about which respectable minds might differ. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 279 (Pon. 1993).

An appellant may apply to the trial division for a stay of judgment. If the stay is denied by the trial division he may apply to the appellate division. If the stay is granted and its terms seem onerous, the petitioner may apply to the appellate division for a modification of the stay, and may also request an expedited briefing schedule. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The FSM Code provision authorizing the general powers of the Supreme Court gives the court the authority to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

Factors for a court to consider in determining it whether should exercise its discretion to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues include whether judicial economy will be furthered by a stay because the cases on appeal may have claim or issue preclusive effect on the case to be stayed; the balance of the competing interests; the orderly administration of justice and whether the case is one of great public importance. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 414 (Pon. 1994).

A stay should be granted in one case pending the outcome of another case on appeal which addresses the same or similar issues, when it is in the interests of avoiding the waste of judicial resources, managing the court=s calendar, sparing the parties unnecessary litigation efforts, and avoiding inconsistent or confusing outcomes, especially if granting the stay will not adversely affect the parties opposing the stay to any substantial extent because they are also parties to the other case on appeal. Ponape Enterprises Co. v. Bergen, 6 FSM R. 411, 415-16 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of judgment by a trial court is an action in aid of the appeal. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

In exceptional cases when consideration by the appellate panel would be impracticable due to time requirements, an application for a stay may be made to and considered by a single Chuuk State Supreme Court justice. In re Contempt of Umwech, 8 FSM R. 20, 21 (Chk. S. Ct. App. 1997).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer

justice. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM R. 20, 22 (Chk. S. Ct. App. 1997).

A single justice may consider a motion for a stay when time requirements and geographical dispersion make it impractical for it to be considered by the full appellate panel. In re Recall Election, 8 FSM R. 71, 73-74 (App. 1997).

A motion for a stay will be denied when it does not show that application to the court appealed from is impractical or that the court appealed from has denied the relief requested accompanied by that court=s reasons for the denial. In re Recall Election, 8 FSM R. 71, 74 (App. 1997).

Motions to stay proceedings during an appeal are governed by Rule 62, CSSC Rules of Civil Procedure, which is near identical to the corresponding rule of the FSM Supreme Court and the Federal rules of the United States. The criteria for granting a motion to stay pending appeal are the same as for equity jurisdiction for the granting of an injunction. Pius v. Chuuk State Election Comm=n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm=n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm=r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

An order directing the Kosrae Land Commission, a non-party, to complete the division of disputed land is not injunctive in nature, and is not a controlling question of law. Therefore the order is not appealable, and it should not be stayed pending any putative appeal. Youngstrom v. Phillip, 9 FSM R. 103, 105 (Kos. S. Ct. Tr. 1999).

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey=s completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When a stay application to the court appealed from is not practicable because the trial justice is unavailable and ill and out of the country for an extended time an appellant may apply for a stay in the appellate division. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 354-55 (App. 2000).

One reason to grant a stay on appeal is if the court is persuaded that the appellant will prevail on the merits of the appeal. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

Generally, there are four factors to weigh before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether issuance of the

stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355 (App. 2000).

A stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits of its claim that a use tax is permitted under the FSM Constitution and has not shown that its injury is irreparable, even though there might be no harm to the only other party to the appeal, and the public interest favors neither granting nor denying a stay. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 353, 355-56 (App. 2000).

The court may order that, before a stay pending appeal will be granted in the appellant=s favor, the appellant must post an appropriate cash bond which would fairly compensate the appellee should the appeal be unsuccessful. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

If an appellee prevails on appeal it will be entitled to recover its trial court and appellate costs, and the court may add the trial court costs to the amount of the appeal bond required for a stay. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

The trial court may require an appellant to file a bond to cover costs on appeal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

Interest earned on an appellate bond placed in an interest-bearing account will be given to the party entitled to the principal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

A case will not be stayed pending the appeal of another when two different accidents, involving different victims, provide the bases for the two cases. Each case must ultimately rest on its facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 463, 465 (Pon. 2001).

An application for a stay of the judgment appealed from pending appeal must ordinarily in the first instance be made in the court appealed from, but a motion for such relief may be made to the appellate division or a justice thereof when the motion shows that: 1) application to the court appealed from for the relief sought is not practicable; 2) that the court appealed from has denied an application; or 3) that the court appealed from has failed to afford the relief which the applicant requested, with any reasons given by that court for its actions. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

A motion in the appellate division to stay will normally be considered by all justices of the court eligible to act with the appellate division in the case, but in exceptional circumstances when such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single FSM Supreme Court justice. Panuelo v. Amayo, 10 FSM R. 558, 560 (App. 2002).

Civil Rule 62 does not limit the power of the appellate division, or a single justice thereof, to stay proceedings during the pendency of an appeal. The appellate division, or a justice thereof, may make any order appropriate to preserve the status quo. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

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The contention – that once a stay is issued the matter falls within the appellate division=s jurisdiction, and the trial court is deprived of all jurisdiction to modify or vacate its stay – cannot be sustained. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court retains jurisdiction over the stay, even during the pendency of an appeal. The only time the trial division loses jurisdiction over the issue is when a stay is denied, which denial permits the appellant to seek a stay from the appellate division. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Jurisdiction over a stay remains in the trial court until such time as the trial court approves a supersedeas bond. This is so even after the notice of appeal is filed, and until approval of the bond, whenever that may occur. By failing to give a bond sufficient to obtain the trial court=s approval, the appellant never obtains his right to a stay. Only the trial division has jurisdiction, in the first instance, to approve the bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court=s power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal=s pendency, until the appellate division=s mandate issues. The trial court=s power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

An appellant cannot argue that the issuance of a stay would not preserve the *status quo* when it would permit the appellant to reside in appellee=s property, rent free, and without any obligation to pay rent, until an appellate session can be convened, and the appeal decided; or that a stay of execution that has not yet to come into effect as a result of the appellant=s failure to offer a bond sufficient to protect the plaintiff=s interests pending appeal could permit a continuing trespass. Konman v. Esa, 11 FSM R. 291, 296-97 (Chk. S. Ct. Tr. 2002).

When it is clear that regardless of the probability of appellant=s success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court=s approval, the appellee is currently entitled to possession of her property pending the appeal=s outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

In order for the court to stay execution of a judgment, it is necessary for the defendant to offer a supersedeas bond to the court. That bond must be in a form, and in a sum sufficient to protect the plaintiff=s interests, in the event that the defendant=s appeal is unsuccessful. The only supersedeas bond which the court would find sufficient in form and amount, under the circumstances, would be a cash bond in a sum that would cover the premises=s rental value during the defendant=s wrongful occupation thereof, and would also cover any additional damages which plaintiff might prove upon remand from the appellate division. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

If no supersedeas bond is deposited with the court as required by its order, no stay shall be considered as having issued, and the plaintiff shall be free to seek enforcement of her judgment against the defendant, according to any lawful means at her disposal. Konman v. Esa, 11 FSM R. 291, 298 (Chk. S. Ct. Tr. 2002).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Pon. 2003).

The four factors that a court will consider in granting or denying a stay on appeal are: whether the applicant has shown that without the stay he will suffer irreparable harm; whether the stay would substantially harm other parties interested in the proceeding; whether the public interest would be served by a stay; and whether the applicant has shown that he is likely to prevail on the merits of the appeal. As to the last factor, a stay may be granted even if there is less than a 50% chance of prevailing on appeal when the issue is difficult, or when it is one of first impression over which reasonable minds may reach different conclusions. Estate of Mori v. Chuuk, 12 FSM R. 3, 7 (Chk. 2003).

No stay pending appeal is warranted when the defendant will not suffer irreparable harm if no stay is granted because it undeniably owes the judgments, as liability is not an issue on appeal since the only issue for appeal purposes is how the judgments will be paid; when the stay would harm the plaintiffs by further delaying exoneration of the constitutional rights that the judgments are intended to vindicate; when all citizens have an interest in preserving the constitutional rights guaranteed to all and would be disserved by the further delay in the judgments= satisfaction; and when the issue presented, although one of first impression, does not alone compel the conclusion that a stay should issue in light of the other considerations – a material one being that liability is not at issue. Estate of Mori v. Chuuk, 12 FSM R. 3, 7-8 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Even assuming without deciding for the sake of a motion to stay that the FSM Development Bank is an agency of the national government, FSM Civil Rule 62(e) contains two conditions precedent that must occur in order for the requirement of an appeal bond or other security to be dispensed with: the appeal must be taken by the national government or an agency thereof, and the enforcement of the judgment must have been stayed. Only then does the waiver of the bond requirement apply. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 351 (Pon. 2004).

Under the plain reading of Rule 62(e), the court must first determine whether the judgment against the FSM Development Bank should be stayed pending appeal. If the judgment is stayed then, and only then, may the bank avail itself of the waiver of a bond or other security provided for by Rule 62(e). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352 (Pon. 2004).

Ours is a developing nation, and preserving the balance among our government=s three branches established by our Constitution is of utmost importance. The FSM Supreme Court must remain sensitive to this concern. To read Rule 62 subparagraphs (d) and (e) to give the FSM national government or an agency thereof a blanket right to stay any judgment of this court, regardless of the terms of the stay and regardless of the appeal=s merit or lack thereof, would be to create a constitutional puzzle. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 352-53 (Pon. 2004).

The court is disinclined to exercise its discretion to grant a stay in the appellant=s favor pending the appeal when that party unsuccessfully attempted to evade the discovery process by refusing, willfully and in bad faith, to disclose a document that the court has found established its liability to the plaintiffs as a matter of law, when its conduct generated a mountainous court file that resulted in the waste of the time of all involved, as well as increased costs to the other litigants, and when it could engage in such conduct with impunity without concern for whether its conduct made economic sense in terms of legal expenses incurred since it employs house 188
counsel. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

An application for a stay of the judgment or order of the court appealed from pending appeal must ordinarily be made in the first instance in the court appealed from. Thus the trial court retains jurisdiction over the case for deciding a motion to stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

When the case is one of public importance involving a novel issue of law, the court will consider four factors in determining whether to grant a stay pending appeal: 1) whether a strong showing has been made of the likelihood that the appellant will be successful on appeal; 2) whether irreparable injury to the appellant will result in the absence of a stay; 3) whether other interested parties would be harmed by the stay; and 4) whether staying the judgment on appeal would serve the public interest. In the usual case the first factor is the most important, but a stay is also appropriate in a substantial case when the equities reflected in the remaining factors weigh heavily in favor of granting the stay. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

An application for a stay of an order of the court pending appeal must ordinarily be made in the first instance in the court appealed from. Amayo v. MJ Co., 13 FSM R. 259, 261 (Pon. 2005).

No Chuuk state justice may hear or decide an appeal of a matter heard by the justice in the trial division, but the issuance of a stay is a procedural matter that does not require the justice issuing it to hear or decide the appeal. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

An application for stay must first be made in the trial division. If the trial justice issues a stay, that justice retains jurisdiction of the stay issue while the appeal is pending. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

An attack upon the Acting Chief Justice=s authority to rule on a motion to stay as a single appellate justice must come from one of the parties, and in the proper forum – the appellate division, not by a trial judge. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

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

When the court=s alleged errors only raise further grounds to disqualify opposing counsel and that counsel already is disqualified, even if the appellate court were to find the arguments on those alleged errors persuasive, it could not possibly grant the relief sought – moving counsel=s appearance as counsel for his clients. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When not only was there never an explicit consent by a client to an adverse representation, but the law firm also never explicitly requested such a consent and the only explicit communication regarding consent came after it became apparent that the representation was becoming very adverse to the client and that client explicitly refused to consent to the representation, the law firm cannot show prejudice from an "original consent" that they cannot show existed. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When attorneys now contend that the consent to the adverse representation was part of a quid pro quo – the adverse client would not object to the representation and in return the attorneys= other clients would not sue the adverse client – but cannot show any explicit request for the adverse client to consent to such a quid pro quo, they thus have not shown a substantial possibility of success on this ground entitling them to a stay. McVey v. Etscheit, 14 FSM R. 268, 272 (Pon. 2006).

When a law firm was disqualified from representing all of the defendants on other grounds, a claim that the conflict between the corporate defendant and the other defendants was waived does not have a substantial possibility of success entitling a petitioner for a writ of prohibition to a stay because the trial court never ruled on the issue. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When there does not appear to be a substantial possibility that the appellate division will grant the writ of prohibition, the circumstances and the equities do not require a stay. McVey v. Etscheit, 14 FSM R. 268, 273 (Pon. 2006).

When a motion to stay the effect of the trial court judgment below was not filed in the court appealed from, as required by Appellate Procedure Rule 8(a), and when, only if the court appealed from denies the stay, or application to that court is not practicable, will the appellate division, on motion, consider a motion to stay, the appellate court will deny the motion to stay. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

When an appellant moved to stay the effect of the trial court judgment below and what the appellant sought to stay was the appellee State of Chuuk=s payment to another of installments of the purchase price for the land in question, the only potential harm would be to the appellee state if it paid money to buy land and ended up receiving nothing because it had not paid the true owner. Accordingly, the motion to stay will be denied. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 624 (Chk. S. Ct. App. 2007).

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

Generally, a court should weigh four factors before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal=s merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay=s issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 178-79 (Pon. 2010).

When the appellant wants the court to stay, pending appeal, a court order that a lot be made available for immediate commercial lease, an appeal issue that involves only the amount of money damages awarded to the appellant is not pertinent to the stay request. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 & n.1 (Pon. 2010).

The court can see irreparable harm if the lot is awarded to another party who develops the lot and then the appellant prevails on appeal, but it cannot see irreparable harm from the bidding process going forward since the appellant may well be the successful bidder. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

There is no significant harm to others interested in the litigation when throughout the litigation, both claimants have been more interested in preventing the other from using Lot No. 014-A-08 than in actually using it themselves and neither made any effort whatsoever to further prosecute their claims (or to settle the matter) for three years until the court prodded them into action. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

When the Pohnpei Legislature has directed that Lot. No. 014-A-08 be leased in an expeditious manner, with the intent that all public land within its plat should be fully leased, the court cannot say that the public interest favors a stay of the bidding process to lease that lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

When the court, weighing the four factors, concludes that they do not favor a stay in the form sought by the appellant, the court will deny the motion for a stay without prejudice since the court would be willing to consider a motion that sought to stay an award of the lot to another if the appellant had

submitted a bona fide bid for the lot and that would also allow the court to set a more accurate figure for an appeal bond – the amount of lease payments that the Board of Trustees could have received but would not receive while the appeal was pending. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 180 (Pon. 2010).

Generally, a court weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the appeal=s merits; 2) whether the appellant has shown that he will be irreparably harmed without the stay; 3) whether the stay=s issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay=s favor. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

Although it is not a trial court=s place to rule on an appellate court=s jurisdiction, an analysis of the first factor to weigh when considering a stay request – likelihood of success – may require that the trial court to express a view on the appellate court=s jurisdiction over what has been appealed. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the trial court is unaware of any basis on which an appellate court can entertain an interlocutory appeal of a motion, it may conclude the plaintiff has virtually zero chance of success on the appeal=s merits because the appellate court will not, for lack of jurisdiction, be able to even consider the appeal=s merits, and when, even if the interlocutory appeal were from a severance order and not a motion, it is not apparent that, under these circumstances, an appellate court could exercise jurisdiction, the first and most important factor weighs most heavily against granting the plaintiff a stay. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

When the first and most important factor weighs most heavily against granting the plaintiff a stay and the second factor – irreparable harm to the appellant – also does not weigh in the plaintiff=s favor because he cannot show any harm when the court has yet to rule one way or the other on its own pending motion, the other two factors are irrelevant since even if they favored a stay, they could not overcome the weight of the first two factors. Mori v. Hasiguchi, 17 FSM R. 602, 604 (Chk. 2011).

An appellant=s failure to obtain a stay does not affect an appeal=s validity or the appellate court=s jurisdiction over it. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. Berman v. Pohnpei, 18 FSM R. 418, 420 (App. 2012).

When affidavits are not attached to a motion for injunction during pendency of appeal but reference is made to affidavits filed earlier in the trial division that might be found in various places in the trial court record and when the other parts of the record that the movants deem relevant to their motion are also not attached to the motion, the movants have failed to comply with Appellate Rule 8(a)=s technical requirements. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the appellate court has not previously construed Appellate Rule 8(a)=s provisions about the issuance of injunctions, it may consult U.S. authority for guidance because FSM Rule 8(a) is drawn from a similar U.S. rule. Berman v. Pohnpei, 18 FSM R. 418, 421 n.2 (App. 2012).

Litigants should not lightly seek injunctions pending appeal. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

An appellate court, in ruling on a request for an injunction pending appeal, must engage in the same inquiry as when it reviews the grant or denial of a preliminary injunction, and in considering whether to

grant a preliminary injunction, courts consider four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. Generally, the purpose of an injunction pending appeal is to maintain the status quo while the appeal is heard and decided. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When the movants do not seek to maintain the status quo pending appeal but seek to substantially alter or even reverse the status quo by obtaining a mandatory injunction against Pohnpei requiring it to take certain actions to prevent the activities of persons not parties to the case, on that ground alone the movants= likelihood of success is poor. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

One who seeks an injunction pending appeal must show irreparable injury. Berman v. Pohnpei, 18 FSM R. 418, 421 (App. 2012).

When what the movants seek to enjoin is not trespass and nuisance on their land but on a causeway or berm which is not their land and when the trial court denied their initial motion for injunction on January 7, 2009, they did not appeal that denial as they could have under Appellate Rule 4(a)(1)(B), the movants have not shown irreparable harm or injury. Berman v. Pohnpei, 18 FSM R. 418, 421-22 (App. 2012).

The balance-of-injuries factor will not weigh in the movants= favor when the movants ask that Pohnpei be ordered to take certain actions against non-parties at an unknown cost and with an unknown exposure by Pohnpei to potential liability to those non-parties while leaving the movants free of any expense or liability. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A preliminary injunction will not be issued when, regardless of where the public interest lies, that factor cannot overcome the other three and cause the issuance of the preliminary injunction sought. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A very substantial cash bond may be required in order to grant a preliminary injunction that is mandatory in nature. Berman v. Pohnpei, 18 FSM R. 418, 422 (App. 2012).

A motion to stay pending appeal is moot when the appeal has been withdrawn. Perman v. Ehsa, 18 FSM R. 452, 454 n.1 (Pon. 2012).

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

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment=s finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

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

FSM R. 577, 578 (App. 2016).

An application to the appellate division for a stay must show that an application to the court appealed from for the relief sought is not practicable, or that the court appealed from has denied the application with any reasons given by the court appealed from for its action. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

A motion for a stay must also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion must be supported by affidavits or other sworn statements or copies thereof, and such parts of the record as are relevant must be filed with the motion. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

When a party=s application to the appellate division for a stay does not state what reasons were given by trial justice for her action in denying a stay and when if there were relevant parts of the record, none were provided, there is not enough before the appellate division for it to consider a stay. Young Sun Int=l Trading Co. v. Anson, 20 FSM R. 585, 587 (App. 2016).

Where a motion for a stay only sought a stay while the Rule 60(b) motion was pending, when the trial court had just denied the Rule 60(b) motion, it correctly denied the stay motion. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 n.5 (App. 2018).

The filing of a notice of appeal does not operate as a stay. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

When an appellant has made a lesser showing of a substantial case on the merits, the court can still grant the requested stay if the balance of equities of the other three factors weighs heavily in the appellant=s favor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 208 (Pon. 2019).

When claims lurking in the background have not been fully developed, the court, in considering a stay, will not place any weight on them. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 209 (Pon. 2019).

When an appellant seeks a stay, the factor to consider is whether other interested parties would be substantially harmed, not the "balance-of-harm" factor. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 209 (Pon. 2019).

A clear legislative directive, that all public lands in a certain cadastral plat should be fully leased in an expeditious manner, is a clear statement of the public interest about that particular public land. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

When the court is faced with weighing competing public interests, it can conclude that the public interest factor does not weigh heavily in the favor of a stay for the appellant=s benefit. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

When an appellant has not made a strong showing that it is likely to prevail on the merits of its appeal; when it has also not shown that the balance of the equities of the other three factors weigh heavily in favor of a stay; and when it has not shown irreparable harm, the court cannot grant the requested stay. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

Under Appellate Rule 8(a), the appellate court may grant an injunction during the pendency of an appeal. An injunction during the pendency of an appeal is a preliminary injunction. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 223 (App. 2019).

When ruling on a request for an injunction pending appeal, an appellate court engages in the same

inquiry as when it reviews the grant or denial of a preliminary injunction. In making this inquiry, the court considers four factors: 1) the likelihood of success on the merits of the party seeking injunctive relief, 2) the possibility of irreparable injury to the movant, 3) the balance of possible injuries or inconvenience to the parties that would flow from granting or denying the relief, and 4) any impact on the public interest. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 223 (App. 2019).

One who seeks an injunction pending appeal must show irreparable injury. The party seeking a preliminary injunction must be faced with irreparable harm before the litigation=s end and there must be a clear showing that immediate and irreparable injury would otherwise occur, and there must be no adequate alternative remedy. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A "winning" candidate cannot show that a revote constitutes irreparable harm because, after the revote is held, that candidate may still be declared and certified as the winning candidate – the revote might not alter the ultimate outcome. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 223 (App. 2019).

Since irreparable harm before the litigation=s end is a prerequisite to preliminary injunctive relief, when irreparable harm does not exist, a preliminary injunction should be denied. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 223 (App. 2019).

When an appellant seeking a stay cannot show irreparable harm, the court need not consider his likelihood of success on the merits. In re Decision of Nat=l Election Dir., 22 FSM R. 221, 224 (App. 2019).

To seek a stay within the appellate division, the movant 1) must first have filed a motion to stay in the court of first instance and if it was denied or gave impractical relief, or if such filing was impractical; 2) the motion must state reasons and facts relied upon and have support in affidavits or by the record; and 3) reasonable notice must be provided to all parties. A single appellate justice may consider the motion if it is deemed impractical, due to requirements of time, for all eligible justices to, and relief may be conditioned on the posting of a bond. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

The Chuuk State Supreme Court appellate division=s standard to review motions for stays of judgment is to weigh the following factors: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

Public interest requires accountability of quasi-governmental entities towards the public when instances of wrongdoing occur, and public interest also demands that a plaintiff who may ultimately lose on appeal, not walk away with a windfall he is unable to repay to the quasi-governmental entity B at the public=s expense. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 279 (Chk. S. Ct. App. 2019).

A court usually weighs four factors when considering whether to grant a stay pending appeal: 1) whether the appellant has made a strong showing that it is likely to prevail on the appeal=s merits; 2) whether the appellant has shown that it will be irreparably harmed without the stay; 3) whether the stay=s issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits if the balance of the equities in factors 2, 3, and 4 weighs heavily in the stay=s favor. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 583-84 (Pon. 2020).

The court, whether considering the matter before it to be a request to continue or reinstate an earlier injunction pending appeal or a request for a stay pending appeal, the court must consider the same basic four factors. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 584 (Pon. 2020).

When the appellant contends that there are important legal issues that must be resolved before its helicopter can be sent abroad, but those legal issues are all matters of United States federal law that can only be resolved in a United States federal court, not in an FSM court, the appellant=s claim that the issues must be heard and resolved by an FSM appellate court before the helicopter can be sent to Guam, a U.S. jurisdiction where those claims can actually be definitively resolved, is frivolous. An FSM court is not the final arbiter of U.S. federal law, and the appellant should not try to make it so. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 584-85 (Pon. 2020).

Although the appellant contends that if its helicopter is sent to Guam, its appeal is in danger of becoming moot, mootness is not even a consideration for all of the issues turning on U.S. federal law because those issues, if raised, will then be properly before the court where they should be determined, and, if there are any remaining issues restricted solely to FSM law, the appellant, if it chooses, can rely on the capable-of-repetition-yet-evading-review doctrine to avoid a dismissal based on mootness. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

The balance of harms weigh substantially, if not overwhelmingly, in the U.S.=s (as represented through the FSM) favor and not in true real party in interest=s (as represented through the appellant=s) favor when, without the helicopter, the U.S. loses the ability to use its "key" evidence against the true real party in interest in his upcoming criminal prosecution, but, once the appellant=s helicopter reaches Guam, the true real party in interest will still have every opportunity to raise his legal claims and seek suppression of that "key" evidence before trial in the only court where those issues are legally cognizable and can actually be raised and resolved – the U.S. district court on Guam. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

An appellant=s purported concerns about its helicopter=s fate on Guam and whether it will ever get its helicopter back are misplaced, and cannot show any irreparable harm when the U.S., through the Assistant U.S. Attorney=s written undertaking, has agreed to comply with the terms of an FSM Supreme Court order about the helicopter=s return to the FSM. There is thus no irreparable harm to the appellant since it will get its helicopter back, and the appellant will not suffer irreparable harm if its injunction is not reinstated. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585-86 (Pon. 2020).

The public interest does not favor a stay when the public interest lies with assisting judicial inquiries into the truth and that those inquiries, and the legal issues around them, be resolved in a court that has the jurisdiction to resolve those legal issues and to make those truth-seeking inquiries – a U.S. federal court – and not needlessly consume FSM judicial resources to consider legal questions that can only be resolved elsewhere. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

A stay or an injunction pending appeal will not be granted when the irreparable harm, the balance of injuries, and the public interest factors all do not favor granting a stay or injunction pending appeal. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

When delay is the major reason, if not the sole reason, for an appellant to seek a stay or injunction pending appeal, the delay is for an improper purpose. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 586 (Pon. 2020).

– Stay – Civil Cases – Money Judgments

The purpose of requiring a supersedeas bond for a stay is to protect the interests of the appellees. A bond protects the appellees by providing a fund out of which it may be paid if the money judgment is affirmed, and it meets the concerns of the appellee that the appellant might flee the jurisdiction or conceal

or dissipate assets so as to render itself judgment-proof. The latter concerns are not present when the appellant is a state. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 223 (App. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party=s rights. Ponape Enterprises Co. v. Luzama, 6 FSM R. 274, 277 (Pon. 1993).

The rule requiring a supersedeas bond to be posted before a stay may granted pending appeal is applicable only to appeals from money judgments. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

A stay of a money judgment pending appeal is effective when the appellant=s supersedeas bond is approved by the court. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

The term "bond" in an appeal context includes more than the supersedeas bond in Civil Rule 62. One example is the bond for costs in Appellate Rule 7; another is the bond that may be required under Appellate Rule 8(b) (which does not use the word "supersedeas") when a motion for stay is brought in the appropriate circumstances in the appellate division. Regardless of the specific type of bond, the general principles applicable to appeal bonds and undertakings also apply in most cases to supersedeas bonds. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

In jurisdictions having statutory requirements for a supersedeas bond, a competent surety is ordinarily required. A surety is one who undertakes to pay money in the event that his principal fails therein, and who is primarily liable for the payment of debt or performance of the obligation of another. The appellant himself is generally not competent to stand as a surety on an appeal bond. Amayo v. MJ Co., 10 FSM R. 427, 428 (Pon. 2001).

A supersedeas bond=s purpose is to protect the appellees= interest by providing a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. Amayo v. MJ Co., 10 FSM R. 427, 428-29 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond=s amount is calculated to include the judgment=s whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor=s recovery is not at risk. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

Due to the lack of an established Pohnpei real estate market, a mortgage offered in lieu of a supersedeas bond does not provide absolute security to an appellee. Realistically, the lack of a ready market for property also precludes a professional surety either inside or outside the FSM from accepting the property as bond collateral. Amayo v. MJ Co., 10 FSM R. 427, 429 (Pon. 2001).

When a supersedeas bond from a qualified surety is presented to the court, the appropriate vetting and assessment of financial information by a competent surety will have taken place, thus obviating the need for a court to engage in that process. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM R. 433, 434 (Pon. 2001).

When no stay has been ordered in a pending appeal, alien judgment-creditors may suggest, although no rule or other authority requires this, that any sums resulting from a levy on the judgment be deposited with the court in an interest bearing account, and the court, aware of the creditors= great

financial distress resulting from the injury sued upon may order a portion of the money deposited to be paid over to plaintiffs= counsel. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

An appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in Civil Rule 62(a). The stay is effective when the supersedeas bond is approved by the court. Panuelo v. Amayo, 10 FSM R. 558, 560, 563 (App. 2002).

The purpose of a supersedeas bond is to protect the prevailing party below pending the appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

Because there is very little FSM law governing supersedeas bonds, the FSM Supreme Court may consult the laws of the United States for guidance, as the civil procedure rules in the United States district courts related to supersedeas bonds are similar to those in the FSM, but the court must also take into account the circumstances in the FSM, and independently consider suitability of the U.S. courts= reasoning for application in the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The amount of a supersedeas bond typically takes into account the amount needed to satisfy the judgment appealed from, as well as costs, interest, and any damages which may be caused by the stay pending appeal. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

While reference to U.S. law is helpful in enunciating general principals regarding posting of supersedeas bonds, the reality of the financial markets in the FSM requires that the established U.S. requirement of posting of a full supersedeas bond, in cash or by a cash-backed surety, receive additional scrutiny. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When, given the general unavailability of cash-backed sureties in the FSM, an appellant would essentially be required to liquidate his several businesses in order to post a full cash bond, and in the absence of a stay, writs of execution would be enforced against appellant=s property before his appeal is resolved, and when the public interest would also be served by allowing appellant the opportunity to provide alternative security, the appellate division may order an alternative bond of $50,000 cash plus a substantial mortgage. Panuelo v. Amayo, 10 FSM R. 558, 564-65 (App. 2002).

In some cases, an abuse of discretion may be found when the trial court rejects, as an alternative to a full cash bond, a supersedeas bond of which a portion of the bond is in cash and a portion is in the form of a property mortgage. Panuelo v. Amayo, 11 FSM R. 83, 85 (App. 2002).

When the appellees= submission for partial distribution of the appellant=s supersedeas bond complies with a single justice=s previous orders concerning client contact, lost wages, and expenses incurred, the court will release the previously-ordered $20,000 distribution plus the pro rata interest on that amount. Panuelo v. Amayo, 11 FSM R. 205, 207-08 & n.1 (App. 2002).

When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The stay is effective when the court approves the supersedeas bond. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

When defendants have not posted a supersedeas bond and have not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, they are not entitled to a stay under FSM Civil Rule 62(d). Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

That defendants claim that they owe a different amount than that for which they were found liable and thus still contest liability is not a basis for a stay pending the appeal when the plaintiffs proved by a preponderance of evidence the amount that the defendants owe to them. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 350 (Pon. 2004).

Judgment creditors have a statutory right to obtain the immediate issuance of a writ of execution unless a motion for an order in aid of judgment is pending. This statutory right is automatically stayed for ten days by court rule, and may be stayed by the court pending an appeal. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A judgment-debtor who posts a satisfactory supersedeas bond is entitled to a stay pending appeal as a matter of right. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee=s interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee=s concern that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503 (Yap 2006).

A supersedeas bond provides absolute security to the party who is affected by the appeal. It also protects the judgment debtor from levy while the appeal takes its course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 503-04 (Yap 2006).

A judgment creditor=s primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants must either post an adequate supersedeas bond or pay the money into the court=s registry (or a combination of both). A letter of undertaking is insufficient. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (Yap 2006).

When the defendants attempted to obtain an $8.1 million standby letter of credit through the Bank of the FSM, Colonia, Yap, but were unable to because that bank was institutionally unable to handle such a letter of credit for a sum larger than $2.5 million; when the possibility that the other bank in the FSM, the Bank of Guam, might be able to issue such a letter of credit was not explored; and the defendants submitted a surety bond from the Travelers Casualty and Surety Company of Hartford, Connecticut; and when the court issued its order, it was under the impression that a standby letter of credit could be issued through the Bank of the FSM, Yap, and if it had had any hint that such was not possible, the order would have specified a letter of credit through any bank in the FSM and only if that was unavailable would an alternative bond have been considered; the court will approve the Travelers surety bond that the defendants have already obtained and stay execution on the judgment pending appeal and further court order. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 533, 534-35 (Yap 2007).

The purpose of a supersedeas bond is to protect the prevailing party=s interest in a trial court judgment pending the appeal. As such, a supersedeas bond provides a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond=s amount is calculated to include the judgment=s whole amount, costs on appeal, interest, and damages for delay. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

Unlike U.S. courts, which require the posting of a full supersedeas bond, the Chuuk State Supreme Court may use its discretion as to whether a cash bond must be posted in the full amount of the trial court judgment. Sisra v. Billimon, 15 FSM R. 266, 268 (Chk. S. Ct. Tr. 2007).

A $7,000 supersedeas bond, which approximates the amount of economic damages the plaintiffs alleged in their complaint plus, at least in part, security against the plaintiffs= costs, interests and delay damages on the appeal but which is far less than the amount of the judgment they obtained, is sufficient when the plaintiffs have consented to the amount. While there is no direct authority that the parties may consent to a lower bond amount than that reflected in the trial court judgment, the principles applied in the settlement context are instructive. Typically parties are free to waive objections to the amount of a claim and settle at whatever amount they may agree upon. Sisra v. Billimon, 15 FSM R. 266, 268-69 (Chk. S. Ct. Tr. 2007).

A motion to freeze funds will be denied when it would violate the stay against judgment pending the defendant=s appeal and would merely duplicate the security given to the plaintiffs by the defendant=s posting of a cash bond. Sisra v. Billimon, 15 FSM R. 266, 269 (Chk. S. Ct. Tr. 2007).

The criteria for granting a stay under Rule 62(c) are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. These criteria do not apply to appeals from a money judgment or to the denial of a motion to vacate a money judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

While a supersedeas bond may be required for a stay of a money judgment under Rule 62(d), it is clear that no such bond is required in order to obtain a modification of an injunction pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 136 (Pon. 2008).

The irreparable injury contemplated by Rule 62(c) is that which will make the appeal moot. Thus, prospective monetary damage is not irreparable injury. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137 (Pon. 2008).

Rule 62(d), not 62(c), applies to stays of money judgments and awards. That rule provides that when an appeal is taken the appellant by giving a supersedeas bond may obtain a stay and the bond may be given when the notice of appeal is filed or after. The stay is effective when the court approves supersedeas bond. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

The purpose of requiring a supersedeas bond for a stay pending an appeal is to protect the appellee=s interests. A bond protects an appellee by providing a fund out of which it may be paid if the money judgment is affirmed, and the bond also meets the appellee=s concern that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond provides absolute security to the party who is affected by the appeal, but it also protects the judgment-debtor from levy while the appeal takes its course. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A supersedeas bond serves three main purposes: 1) it permits the appellant to appeal without risking satisfying the judgment prior to appeal and then being unable to obtain a refund from the appellee after judgment is reversed on appeal; 2) it protects the appellee against risk that the appellant could satisfy the judgment prior to the appeal but is unable to satisfy the judgment after appeal; and 3) it provides a guarantee that the appellee can recover from the appellant the damages caused by the delay incident to the appeal, that is, the bond guarantees that the appellee can recover the interest that accrues on the judgment during appeal, and guarantees that the appellant will satisfy the judgment plus interest

and costs if it is affirmed on appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140 (Pon. 2008).

A judgment creditor=s primary concern when a judgment in his favor is stayed pending appeal is that he be secure from loss resulting from the stay of execution. Therefore, to be entitled to a stay of execution pending appeal, the defendants may either post an adequate supersedeas bond or pay the money into the court=s registry (or a combination of both). If the appellants post a supersedeas bond, they are entitled to stay as of right once the court has approved the bond, but statutory post-judgment interest will continue to accrue until the judgment is paid. If the money is paid into court, interest will cease to accrue on the judgment, and if only a part of the principal is paid, then the statutory interest stops only on that part. Payments into court accrue interest for the ultimate recipient=s benefit only as earned in the court=s depository institution. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 140-41 (Pon. 2008).

Usually, a full supersedeas bond is required in order to stay execution of a judgment, and the amount of the bond is calculated to include the whole amount of the judgment, costs on appeal, interest, and damages for delay, but courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor=s recovery is not at risk. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

If the appellants have a history of paying judgments of large size, the court might be able to issue a stay without a bond or equivalent security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

When the appellants= ability to pay is not so plain that a bond would be a waste of money and when the appellants have not shown that a bond would put their other creditors in jeopardy, the judgment-debtor defendants must provide adequate security for the judgment-creditor appellee in order for the court to issue a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

A stay may be denied when the appellant is unable to post a supersedeas bond and has failed to propose alternate security. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 141 (Pon. 2008).

It is the appellant=s burden to demonstrate objectively that posting a full bond is impossible or impracticable; likewise, it is the appellant=s duty to propose a plan that will provide adequate (or as adequate as possible) security for the appellee. A supersedeas bond is essentially a judgment insurance policy, and the alternate security must serve the same basic purpose. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When the defendants are not entitled to a stay on the terms sought; when they have not posted a supersedeas bond; and when they have not proposed alternative security for all, or any part of, the judgment they seek to appeal for the second time, the court must deny the defendants= motion for a stay pending appeal. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 143 (Pon. 2008).

An offer of a supersedeas bond in the amount of the consummated sale price plus projected interest and costs, might entitle the appellants to a stay of the sale since a supersedeas bond=s purpose is to protect the prevailing party below pending the appeal. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Generally, there are four factors to weigh before granting a stay pending an appeal in a civil case: 1) whether the appellant has made a strong showing that it is likely to prevail on the merits of the appeal; 2)

whether the appellant has shown that without the stay it will be irreparably harmed; 3) whether the stay=s issuance would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay, and ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

Even though there might be no harm to the only other party to the appeal and the public interest may favor neither granting nor denying a stay, a stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits and it has not shown that its injury is irreparable. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

A claim that if a property is worth $832,000 but being sold for $151,000, it is a serious irreparable harm that cannot be compensated or remedied, does not constitute an irreparable injury since, if it is an injury, it is an injury that can easily be compensated monetarily, and may, in this case, be accomplished more easily than is usual – by a reduction in the defendants= indebtedness to the bank, a quick and efficient remedy. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269 (Pon. 2010).

The appellants= chances of success on appeal are slim when they have not put forth any basis to show that the court=s reasoning for denying raising the minimum bid price from $120,000 to $832,990 was unsound or unconstitutional and when no FSM order in aid of judgment law relating to real property requires a certain minimum bid or requires that a minimum bid be set in a particular way, which is all that the court ruled on in the order appealed from. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 269-70 (Pon. 2010).

The appellants= likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

A collection case based on a defaulted loan is not a case or dispute in which an interest in land was at issue and so the FSM Constitution article XI, section 6(a) jurisdictional language is not applicable since an apartment building=s sale is merely a post-judgment remedy sought by the judgment-creditor because other remedies had been ineffective. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

Even if the other two factors favor a stay, it would not be enough to overcome the appellants= lack of irreparable injury and of a substantial chance of a success on the merits. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The rule requiring a supersedeas bond to be posted before a stay may be granted pending appeal is applicable only to appeals from money judgments. Heirs of Henry v. Heirs of Akinaga, 18 FSM R. 207, 210 (App. 2012).

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder=s right to execute upon the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

An appeal from a final judgment does not affect the judgment holder=s right to enforce the judgment unless a supersedeas bond is posted or a stay of enforcement is ordered by the court. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Since the trial court retains jurisdiction to enforce a judgment even though it has been appealed, a judgment holder may, in the absence of a stay, seek to enforce its judgment, and a hearing to enforce or modify existing orders in aid of the existing judgment will proceed as scheduled because Congress has, by statute, has authorized judgment holders to use these methods to enforce valid money judgments. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

Whether an appeal=s pendency hampers a money judgment=s enforcement or collection usually depends on whether a stay has been granted. Chuuk Public Utility Corp. v. Chuuk Health Care Plan, 22 FSM R. 38, 42 (Chk. S. Ct. App. 2018).

An appellant may be irreparably harmed if it prevails on appeal and the appellee, or his estate, is unable to repay, and substantive harm to the appellee is not as likely when the appellate decision should not delay it more than several months. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 278 (Chk. S. Ct. App. 2019).

The court may require a bond in the judgment amount as a precondition to grant a motion to stay. If the appellee should prevail, the release of the judgment money will occur unhindered if it is already posted as a bond – thus alleviating the appellee=s main concern that he will not see his judgment during his lifetime. Chuuk Public Utility Corp. v. Rain, 22 FSM R. 276, 279 (Chk. S. Ct. App. 2019).

Collection proceedings against a judgment debtor will not be stayed because the debtor has filed a notice of appeal and has also filed an independent action for relief from the judgment. The usual method to stay the collection of a money judgment is for the defendant to give a supersedeas bond, and when the judgment debtor did not obtain, and did not offer to obtain, a supersedeas bond, and has not stated any basis upon which the court could exercise its discretion to stay the money judgment against him in absence of a bond, he is not entitled to a stay under FSM Civil Rule 62(d). FSM Dev. Bank v. Talley, 22 FSM R. 608, 610 (Kos. 2020).

In the absence of a stay, the court has the ability, and the inclination, to protect a judgment-debtor during an appeal by requiring that all sums the judgment-debtor is ordered to pay, be paid into the court=s registry where the money would be held awaiting the outcome of the judgment debtor=s appeal, with the money delivered to whichever party the appellate court deems proper. FSM Dev. Bank v. Talley, 22 FSM R. 608, 610-11 (Kos. 2020).

– Stay – Criminal Cases

A stay is normally granted only where the court is persuaded as to the probability of ultimate success of the movant. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In determining whether to grant a stay, a single appellate judge, acting alone, must consider whether it is more likely than not that the petitioner would be able to persuade a full appellate panel as to the soundness of his legal position and that there are such special circumstances that the trial court should be mandated to modify its conduct of the trial. In re Raitoun, 1 FSM R. 561, 563 (App. 1984).

In weighing the possibility of success of an application for a writ of mandamus on grounds that one public defender=s conflict should be imputed to all lawyers in the Public Defender=s office, when the original disqualification is based upon a conflict of the attorney=s loyalties because of his familial relationship with the victim, but no issue of confidentiality is raised, and only the issue of loyalty is present, but no showing is made that the other lawyers could not give full loyalty to the client; there exists no substantial possibility of an appellate court granting the writ and a stay of proceedings pending

consideration of the application should not be granted. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 254 (App. 1990).

Under FSM Appellate Rule 27(c) a motion for a stay of proceedings pending consideration of a motion for a writ of mandamus to require a trial court to appoint a lawyer other than the Public Defender is denied where there: 1) is no substantial possibility that a full panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented in favor a stay. Office of the Public Defender v. Trial Division, 4 FSM R. 252, 255 (App. 1990).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM R. 297, 298-99 (App. 1998).

When a person convicted of a crime appeals only his jail sentence and seeks a stay of that sentence pending appeal, the trial court will grant a stay only if it is reasonably assured that the appellant will not flee or pose a danger to any other person or to the community, and that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. The burden of establishing these criteria rests with the defendant. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

The request of a defendant, who is appealing only his jail sentence, for a stay pending appeal will be denied because his allegation that his four-month jail sentence for misappropriating to his own use $17,125 of government money is cruel and unusual punishment and an abuse of the judge=s discretion when he has diabetes does not raise a substantial question likely to result in a sentence without a jail term and raises the inference that the appeal was brought for the purpose of delay. FSM v. Nimwes, 8 FSM R. 299, 300 (Chk. 1998).

A sentence of imprisonment will be stayed if an appeal is taken to the Chuuk State Supreme Court appellate division and the defendant is released pending disposition of appeal if application for release is made in the first instance in the court appealed from. Iwenong v. Chuuk, 8 FSM R. 550, 551-52 (Chk. S. Ct. App. 1998).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The burden of establishing the requisite criteria rests with the defendant. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

Among the criteria the defendant must show to be released pending appeal when the appeal is only of his sentence of imprisonment is that the appeal is not for the purpose of delay and that it raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

A defendant appealing his sentence has utterly failed to meet the criteria for release pending appeal when neither his moving papers nor argument raised a substantial question of law or fact likely to result in a sentence not including a term of imprisonment. FSM v. Akapito, 10 FSM R. 255, 256 (Chk. 2001).

That the defendant would then be free, in mind and body, to assist his counsel in the preparation of his appeal is not a substantial question of law or fact justifying release pending an appeal. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

When an appeal of a criminal sentence does not raise any substantial question likely to obtain the result the appellant seeks, the court may draw the inference that it was brought for the purpose of delay. FSM v. Akapito, 10 FSM R. 255, 257 (Chk. 2001).

Since an order granting a change of venue is not appealable, no stay is warranted while the

defendant seeks its review in the appellate division. FSM v. Wainit, 11 FSM R. 411, 412 (Pon. 2003).

When, given the appellate cases= unusual posture, the appellate division determines that it is appropriate to apply Appellate Procedure Rule 2, which allows it, for good cause shown, to suspend in a particular case the Appellate Rules= usual requirements and order proceedings in accordance with its direction and when it is within the court=s inherent power to ensure the efficient administration of justice, which may be hindered if trial were to start before it ruled on the question presented, it may stay trial in the case below pending further notice. Wainit v. FSM, 11 FSM R. 568, 569 (App. 2003).

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

There is no good reason to stay the completion of discovery in a criminal case while appellate review is sought when the defendant has already made his discovery request and because the amount of discovery that can be requested in a criminal case is so limited and the government cannot even request discovery unless the defendant has already done so, it is difficult to conceive of any circumstances under which staying discovery in a criminal case would be proper. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

As jeopardy does not attach in a criminal case until the first witness is sworn in to testify at trial, the trial court will therefore not stay pretrial proceedings while the defendant seeks appellate review because rulings on pretrial motions not yet filed may dispose of the case entirely in the defendant=s favor. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

The only stay of a pending criminal case while appellate review is sought that the trial court could consider granting would be a stay of trial. For a stay to be granted, the appeal must be meritorious – a substantial likelihood that the applicant will prevail. A stay is normally granted only where the court is persuaded as to the probability of the movant=s ultimate success. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

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

An issue appealed is not meritorious and the method of seeking appellate review is not meritorious solely because it is a matter of first impression for the appellate division. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

In order for a defendant to be granted a stay of a criminal proceeding while he seeks interlocutory appellate review, he must show that his appeal or his petition is meritorious and has a substantial likelihood of success on the merits. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Appellate Rule 9(c) sets the criteria for release pending appeal in a criminal case, and the burden of establishing the requisite criteria rests with the defendant. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community, and then the movant must establish that the appeal is not for purpose of delay and that it raises a substantial question of law or fact likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. FSM v. Moses, 12 FSM R. 509, 511 (Chk.

2004).

The release of a prisoner is not automatic once a notice of appeal and a motion for release have been filed. The prisoner must establish the requisite criteria exist under Appellate Rule 9(c). FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court=s discretion. FSM v. Moses, 12 FSM R. 509, 511 (Chk. 2004).

The court may, in its discretion, stay pending appeal upon such terms as the court deems proper, an order for restitution, but the court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets. The court may invite the movant and the government to submit their views on the advisability, if restitution is stayed, of an order that while the appeal is pending the restitution be paid into the court=s registry to remain there in an interest-bearing account until the appeal is decided. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

An order placing a defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation will commence. If the order is stayed, the court must fix the terms of the stay. FSM v. Moses, 12 FSM R. 509, 512 (Chk. 2004).

When the trial court=s decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM R. 523, 524 (App. 2004).

Under Rule 38(a)(4), when a sentence is probation and an appeal is taken, an automatic stay pending appeal remains in effect until a starting date is set for probation to begin. If a motion to stay is filed, the court would not set a starting date until the defendant=s motion for a stay was either granted (in which case the terms of that stay order would take effect) or denied (in which case a starting date would be set for probation to begin). Conceivably, the court could set a starting date that came before the court was able to rule on the motion to stay. In such a circumstance, the probation would start and then a stay would be either granted or denied. FSM v. Fritz, 13 FSM R. 88, 91-92 (Chk. 2004).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. It permits the court to release a person who has been convicted of an offense and has filed an appeal only if the court believes that 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. FSM v. Wainit, 14 FSM R. 164, 167 (Chk. 2006).

Once the court has determined that adequate and proper release conditions can be set, it must then make a two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

A defendant=s potential health problems and needs are not relevant to a motion for stay of execution of sentence. They are appropriately raised in a Rule 35(b) motion for reduction of sentence. FSM v.

Wainit, 14 FSM R. 164, 168 (Chk. 2006).

That the trial transcript might reveal issues is a ground far too speculative for the court to conclude that a defendant has met Rule 9(c)=s requirement that there be a substantial issue of law or fact for a stay pending appeal. The court cannot presume that an issue of which counsel is currently unaware will be revealed by a review of a completed transcript and that, if revealed, it will be a substantial issue. FSM v. Wainit, 14 FSM R. 164, 168 (Chk. 2006).

When the offenses being charged, the charges tried, and the resulting conviction involved only the national election and candidates, and not the state election, whether the national government can prosecute a violation of rights in a state election is not a possible, let alone a substantial, issue on an appeal of the conviction. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

If by raising an issue about the state election the appellant means that evidence relevant to the national election charges could not be introduced if it also referred to the candidates and campaigns for the simultaneous state election, this, without more, is not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

That the evidence presented in a prosecution for interfering in a national election, might also have sustained a state court conviction on state law charges (if one had been brought) arising from the simultaneous state election, is irrelevant and thus not a substantial or close question. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot=s candidates, the question of who are the Government of Udot=s candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Considering the high hurdle that a criminal appellant must overcome to prevail on an insufficiency of the evidence challenge, it would take much more than the mere assertion that this is possible issue on appeal for a court to consider this a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

Merely being an issue of first impression before the appellate division does not automatically make it a nonfrivolous issue, and just because an issue being brought before the appellate division is one of first impression for that division, does not make it a substantial issue entitling a defendant to a stay. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

An assertion that a constitutional issue is presented as to whether the FSM can, in its laws, "define who is a public officer, when it is a function expressly reserved to the state government," mischaracterizes the court=s holding that national laws are often applied to persons based on their status, even when that status is defined solely by another government (not that the FSM can, in its laws, define who is a public officer under state law), is frivolous. To assert that the national government cannot apply its laws based upon a person=s status as defined by some other body is also frivolous. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

A contention that the meaning of the term "public officer," which was not defined in the FSM Code, cannot be its common and approved English usage (the required construction under the FSM Code) but a meaning that comports with different, defined terms, is not a substantial issue. Also meritless is a passing reference that new legislation, which does not include the term "public officer," somehow redefines or clarifies the term "public officer" to create an issue as to the meaning of "public officer." FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay. It is quality, not quantity, that creates a substantial or close issue. FSM v. Wainit, 14 FSM R. 164, 170 (Chk. 2006).

When, pursuant to Appellate Procedure Rule 9(b), an appellant first filed a motion with the trial court for release while an appeal is pending and the trial court denied the motion and set out in detail the reasons for the denial in its order, a motion for release may thereafter be made to the Supreme Court appellate division or to a justice thereof. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9(c) lists the criteria that the court should use to determine whether to grant a motion for release pending appeal The appellant must establish 1) that he will not flee or pose a danger to any other person or to the community and 2) that his appeal is not for the purpose of delay, and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time already served. Wainit v. FSM, 14 FSM R. 193, 194 (App. 2006).

Rule 9 provides no explicit standard of review for a motion made to the appellate court for release pending appeal. Rule 9(b) contemplates the appellate court making an independent determination on whether post-conviction release should be granted and clearly contemplates the appellate court giving some weight to the trial court=s findings as the appellate court is required to consider its statement of reasons for the denial. The court=s determination should give great deference to the trial court=s statement of reasons for denial, as that court is in the best position to evaluate the appellant=s legal arguments at least until the appeal has been briefed. Wainit v. FSM, 14 FSM R. 193, 194-95 (App. 2006).

When an appellate rule has not been construed by the FSM Supreme Court and the rule=s language is the same or substantially similar to its United States counterpart, the court may look to U.S. courts for guidance. Wainit v. FSM, 14 FSM R. 193, 195 n.1 (App. 2006).

When the appellant has not raised any arguments in his motion for release that counter the trial court=s findings or undermines its reasoning relied on in denying the motion for release, the appellate court will find that the appellant has not established that his appeal raises a substantial question of law or fact and will deny it and adopt as its own the trial court=s well-reasoned decision. Wainit v. FSM, 14 FSM R. 193, 195 (App. 2006).

Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The defendant has the burden of establishing the requisite criteria. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court=s discretion. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

Rule 9(c) permits the court to release persons who have been convicted of an offense and have filed appeals only if the court believes that 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, and if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person shall be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

If the court determines that adequate and proper release conditions can be set, it must then make a

two-part determination: 1) whether the appeal raises a substantial question of law or fact and does not appear to be for purpose of delay and 2) if a substantial question is found, whether that question is likely to result in a reversal, new trial, a sentence not including imprisonment, or imprisonment for less than time served. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 320, 324 (Chk. 2006).

That a pretrial motion to dismiss succeeded in eliminating one count and a motion to acquit on the other count was unsuccessful – is too vague an issue to show a substantial or close question. Exactly what issue(s) an appellant intends to raise under this ground is unclear. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

As summarized in a well-known adage – ignorance of the law is no excuse. Nor is it a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

The standard of review that an appellate court must apply in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence. In reaching this conclusion, the appellate court=s obligation is to review the evidence in the light most favorable to the trial court=s factual determinations and most favorable to the inferences the trial court drew from the evidence. FSM v. Petewon, 14 FSM R. 320, 325 (Chk. 2006).

A mere assertion that an appellate panel might view the evidence from different angles does not show a close or substantial question. It ignores the standard that the appellate court must use in its review and the difficulty an appellant has in prevailing on an insufficiency of the evidence claim. FSM v. Petewon, 14 FSM R. 320, 325-26 (Chk. 2006).

Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense) must be raised prior to trial. Any deficiency in the information not raised before trial has been waived and therefore cannot be a substantial or close question on appeal. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

Deficiencies in the presentation of evidence is a claim of insufficiency of the evidence. In light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, without more, cannot consider this to be a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A question whether the verdict is based on sufficient evidence and is consistent with the evidence as presented and the charges as filed is too vague for the court to consider it a substantial or close question, and it raises an insufficiency of the evidence claim. The mere assertion that the evidence was insufficient, in light of the appellate court=s standard of review, does not present a close or substantial question. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

When there was evidence that an appellant was part of a conspiracy, an assertion that his mere knowledge of a conspiracy is not enough to implicate him in the conspiracy, does not present a substantial or close question. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

There are cases where the voluntariness of a defendant=s statement and whether he knowingly and

intelligently waived his right to silence present a close or substantial question, but when the appellant merely lists the denial of his suppression motion as a ground for appeal and does not state why it is an appealable issue or why that denial was in error, the ground will not support a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

When no evidence was ever presented that a defendant made any effort, let alone a reasonable effort to prevent the conduct or result which is the object of the conspiracy, he cannot claim that the withdrawal or renunciation defense presents a substantial question since he did not present any evidence that might show that he could meet the defense=s statutory requirements. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

That the time an appellant expects the appeal to take deprives him of his right to appeal is a meritless ground for a stay. FSM v. Petewon, 14 FSM R. 320, 327 (Chk. 2006).

Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Rule 38(a). Rule 38(a)(2) provides that a defendant who has been sentenced to imprisonment and who has appealed shall be released pursuant to Appellate Procedure Rule 9(b) and Appellate Rule 9(c) sets out the criteria for release under Appellate Rule 9(b). FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal. Criminal Rule 38(a)(2) and Appellate Rule 9 specifically apply to such situations. Criminal Rule 46 applies generally to release on bail while Criminal Rule 38(a)(2) (and by reference Appellate Rule 9) applies specifically to release pending appeal after a sentence of imprisonment has been imposed. FSM v. Petewon, 14 FSM R. 463, 467 (Chk. 2006).

Criminal Rule 46(c) is not a nullity since it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Such a defendant, although no judgment of conviction has been entered, may file a notice of appeal which will become effective once the defendant has been sentenced because a notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment is treated as filed after such entry and on the day thereof. FSM v. Petewon, 14 FSM R. 463, 467-68 (Chk. 2006).

If a criminal defendant files a notice of appeal after the court publicly announced its finding of guilty but before the sentence of imprisonment is imposed and the judgment of conviction entered, the notice of appeal would become valid on the date the judgment is entered and Criminal Rule 46(c) would have applied to whether he should have been on release from when the notice of appeal was actually filed until the entry of judgment. Once a judgment of conviction imposing a sentence of imprisonment is entered, Criminal Rule 38(a)(2) and Appellate Rule 9(b) and 9(c) apply to any application for release pending appeal. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A criminal defendant=s motion for a stay of imprisonment pending appeal is governed by Criminal Rule 38(a)(2) and Appellate Rule 9(b) and the criteria to be used are as set out in Appellate Rule 9(c), which provides that if the court concludes that no such a risk of flight or danger exists and it appears that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in: 1) reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served, plus the expected duration of the appeal process, the person will be released. The burden of establishing the requisite criteria rests with the defendant. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

Release from imprisonment pending appeal is not automatic once a notice of appeal and a motion to stay have been filed, but rests on the court=s sound discretion. The appeal must raise a substantial question of law or fact likely to result in a reversal; or an order for a new trial; or a sentence that does not include a term of imprisonment; or a sentence reduced to a jail term less than the total of the time already served. FSM v. Petewon, 14 FSM R. 463, 468 (Chk. 2006).

A "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

Since an appellate court=s standard in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence and since the appellate court=s obligation is to review the evidence in the light most favorable to the trial court=s factual determinations and most favorable to the inferences the trial court drew from the evidence, in light of the standard of appellate review for such claims and the high hurdle an appellant must overcome, the court, after having carefully reviewed the arguments and the extensive evidence, cannot consider insufficiency of the evidence claims to be a close or substantial questions. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A claim that the statute of limitations has run that is raised as an insufficiency of the evidence claim – based on a contention that there is no evidence that any overt acts to further the conspiracy were committed within the statute of limitations applicable to the appellant because the appellant explains away all acts within the three years before the information was filed as totally innocent acts or acts to commit some other underlying offense – is not a close or substantial question because an overt act in the furtherance of a conspiracy may be in itself a totally innocent act, and not a crime at all. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A criminal defendant=s claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction=s collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant=s request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since, under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed will be released pursuant to Appellate Procedure Rule 9(b) and since, by contrast, Criminal Rule 46(c) applies to requests for release when a defendant has been found guilty but has not yet been sentenced, when a motion for stay of execution was ruled on after sentencing, the court will treat it as a request pursuant to Criminal Rule 38(a)(2), and not one under Rule 46(c). Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

Under Rule 38(a)(2), a defendant who has been sentenced to imprisonment and who has appealed may seek release under Appellate Procedure Rule 9(b). After the filing of a notice of appeal and a motion to stay, the defendant=s release is not automatic but within the court=s discretion, and the burden is on the defendant to establish the criteria for release. Chuuk v. Inek, 17 FSM R. 137, 142 (Chk. S. Ct. Tr. 2010).

The burden to meet the criteria for release is on the defendant. Such criteria include the burden to establish that the defendant will not flee or pose a danger to others in the community. These and other criteria were intended to be set forth by statute but since there is no such statute, the Chuuk State Supreme Court will adopt the criteria provided for under FSM Appellate Rule 9(c) to the extent consistent with the apparent intent of Chuuk Appellate Rule 9(c). Chuuk v. Inek, 17 FSM R. 137, 142-43 (Chk. S. Ct. Tr. 2010).

The trial court will grant a stay only if the appellant meets his burden to reasonably assure the court through his written and oral presentations that he will not flee or pose a danger to any other person or to

the community and that his appeal is not for purpose of delay, and if he raises a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

For purposes of a stay, a "substantial question of law or fact" is defined as one that is a "close" question or one that could be decided the other way. If a substantial question of law or fact is raised, the defendant must also show that the issue raised is likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

Raising a series of non-substantial issues on appeal does not combine or convert them into a substantial issue entitling the movant to a stay since it is quality, not quantity, that creates a substantial or close issue. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

If an issue raised for appeal is too vague to clearly show a substantial or close question for appeal, the motion to stay will be denied. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant has met his burden to show that he will not flee or pose a danger to any other person or to the community, the defendant must, in order for the court to grant a stay, also raise a substantial question of law or fact that will result in either a reversal, an order for a new trial, a sentence without imprisonment, or a sentence reduced to a term of imprisonment less than time already served. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks a stay and raises for appeal that the time of the alleged offense was not specific enough to inform him of the charge and the defendant raised that argument regarding the sufficiency of the information in his pre-trial motions, so preserving the issue for appeal, and when the court already denied the pre-trial motion on this issue and the defendant has not provided any additional authority to show a close issue, the defendant has failed to meet his burden to show a substantial issue of fact or law upon which he will prevail on appeal. Chuuk v. Inek, 17 FSM R. 137, 143 (Chk. S. Ct. Tr. 2010).

When the defendant seeks to challenge the court=s finding of when the offense occurred, based on the inconsistent dates in the police report and the information, he is challenging the sufficiency of the evidence to prove the charge. A defendant faces a high hurdle when challenging the sufficiency of the evidence. For the challenge to be considered a close or substantial issue for appeal entitling the defendant to a stay, he must, in light of the trial judge=s role of weighing the evidence, come forth with more than mere assertions of inconsistencies in the evidence especially when he faces the additional hurdle that he is now using as a basis for his contention of inconsistencies in the record, evidence that was not and which the defendant did not seek to introduce into the record. Chuuk v. Inek, 17 FSM R. 137, 143-44 (Chk. S. Ct. Tr. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant=s availability would have been immaterial for the purposes of ruling on the report=s admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A defendant=s contention that as a result of the police report containing an inconsistent date of the

offense, he was misled as to when the alleged offense took place, borders on the spurious because the information is the charging document that informs the defendant of the charge he is called upon to defend against and a police report that was not mentioned in the affidavit of probable cause and which no one sought to admit into evidence has no bearing on whether the defendant was sufficiently informed of the allegations. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

A mere inconsistency between the allegations contained in the information and a document that the defendant did not seek to admit into evidence does not provide the court with a substantial question of law or fact. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

Where the court addressed the defendant=s motions before trial and ruled that the issues raised were subject to proof at trial and where, at the conclusion of trial, the court denied the motion and made its findings on the record, the defendant does not raise a substantial issue of fact or law when he cannot state how the court=s deferred ruling adversely affected his right to appeal or how the ruling otherwise violated Criminal Rule 12(e). Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

No substantial issue of law or fact is raised when the defendant argues that the government failed to file a written response to his second motion to dismiss and therefore it should have been granted since the court has the discretion to allow argument without the filing of a brief and since the court will not grant an unopposed motion unless there are otherwise good grounds to grant it. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

The relevant subsections of Chuuk State Law No. 190-08, ' 27 provide that upon appeal, punishments of imprisonment for contempt will automatically be stayed unless the court finds cause to the contrary and renders its findings in writing. Chuuk v. Billimon, 17 FSM R. 313, 315 (Chk. S. Ct. Tr. 2010).

Since the defendant is entitled to those procedural rights normally accorded other criminal defendants, defendants in the vast majority of criminal contempt cases are given substantially those procedural rights normally accorded to defendants in other criminal cases. Criminal contempt convictions are not a special category of crime deserving of or requiring alternative considerations other than those specified under Chk. S.L. No. 190-08, ' 27, Chk. Crim. R. 42, and case law. Chuuk v. Billimon, 17 FSM R. 313, 315-16 (Chk. S. Ct. Tr. 2010).

Subsection 46(c) provides for release pending sentence and for release pending appeal. It states that a person who has been convicted of an offense and is either awaiting sentence or has filed an appeal will be treated in accordance with the provisions of Rule 46(a)(1) through (6), which provide for conditions of pre-trial release and address the nature of information supporting orders issued under the rule. Criminal Rule 46(c) does not apply to a person who has been sentenced to imprisonment and has filed a notice of appeal; it applies to the release of a defendant who has been found guilty – "convicted" – but not yet sentenced. Rule 46 applies generally to release on bail. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

In criminal matters where a judgment of conviction imposes a sentence of imprisonment, the

controlling rules for a stay are Chuuk Criminal Procedure Rule 38(a)(2) and Chuuk Appellate Rule 9 (b)-(c). An order issued pursuant to these rules would constitute one in aid of appeal. Chuuk v. Billimon, 17 FSM R. 313, 316 (Chk. S. Ct. Tr. 2010).

As a general rule, a properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court, but a specific provision in the rules will control rather than a general rule to the extent that they conflict. Thus an application for release after a judgment of conviction must be made in the first instance in the court appealed from and 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 Chuuk State Supreme Court appellate division or to a justice thereof. So that when the defendant brought an earlier motion for stay pending appeal which was granted, he should have argued the release of his passport at that time when the issue was properly before the trial court, since the considerations a court is required to undertake when granting a release pending appeal involve contemplation and possible imposition of conditions for release. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

Chuuk Appellate Rule 9(b) makes no provision for reconsideration of a decision on a motion to stay made by the court appealed from in the first instance and specifically provides for the appellate division=s review of such a determination. Were the trial court to consider a defendant=s second motion as one made pursuant to Chuuk Criminal Rule 38(a)(2), it would do so in contravention of the Appellate Rules of Procedure. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

When a defendant has been convicted of a crime and that conviction still stands; when his sentence for the conviction, though stayed pending appeal, also remains intact; and when his release pending appeal is subject to conditions, to view him as a "free man with all his rights intact," as he now weathers the consequences of being a convicted criminal, is to take flight into fantasy. The stay of his sentence does not also serve to exonerate him. Chuuk v. Billimon, 17 FSM R. 313, 317 (Chk. S. Ct. Tr. 2010).

If the court were authorized to rule on a defendant=s motion to release his passport while his conviction is on appeal, it would be hard pressed to see how he is less likely to flee the jurisdiction now than when the conditions of his release were first imposed since the weight of the evidence adduced at trial has demonstrated his guilt beyond reasonable doubt and since now he faces re-instatement of a six-month term of imprisonment. Chuuk v. Billimon, 17 FSM R. 313, 318 (Chk. S. Ct. Tr. 2010).

Although it might be advisable for the trial court to conduct a hearing on motions to stay and for in forma pauperis status, especially if the motions look like they may be denied, it is not part of the constitutional public trial right. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

A stay is mandatory only if the defendant is released pending appeal because a sentence of imprisonment must be stayed if an appeal is taken and the defendant is released pending disposition of appeal. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

Rule 38(a)(2) does not make a release pending appeal mandatory because the word "and" requires that both conditions – a pending appeal and a release – exist before a stay must be granted. If an appellant is not released pending appeal, the rule does not entitle him to a stay. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the appellant is not released and there is no stay the appellant then gets credit for time served while the appeal is pending. If the sentence were stayed but the defendant remained in jail, he would not get credit for time served, which would be inherently unfair. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

If the court appealed from refuses to release a criminal defendant pending appeal, or imposes conditions of release, that court must state orally on the record or in writing the reasons for the action taken, and must do so in all future cases. Ned v. Kosrae, 20 FSM R. 147, 156 (App. 2015).

Pohnpei Criminal Procedure Rule 38(a)(2) does not grant a defendant the right to an automatic stay pending appeal. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

Under Pohnpei Criminal Rule 38(a)(2), a stay of sentence is automatic only if the defendant is released pending disposition of appeal. If the defendant is not released pending appeal, there is no automatic stay. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

If a convicted defendant is not released pending appeal, there is no automatic stay, but the trial court may make recommendations about the conditions and place of a defendant=s imprisonment while the appeal is being prepared. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 66 (Pon. 2018).

A defendant=s release, and the stay of his imprisonment pending appeal, is a matter of judicial discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

A court may abuse its discretion by not ruling on a defendant=s motion for a stay pending appeal at any time before the date of his release from jail. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Under the Pohnpei appellate rules, for a stay of sentence pending appeal, a showing that the appeal raises a substantial question of law is sufficient cause for granting a stay upon reasonable terms. Even then a stay is not automatic. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Stays in criminal cases are granted in accordance with the provisions of Criminal Procedure Rule 38(a), which provides that a defendant who has been sentenced to imprisonment and who has appealed will be released pursuant to Appellate Rule 9(b), and Appellate Rule 9(c) sets out the criteria for release under Appellate Rule 9(b). FSM v. Shiro, 22 FSM R. 120, 122 (Chk. 2018).

A person who has been convicted of a crime and has filed an appeal will be released only if the court believes that 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. Defendants have the burden of establishing the requisite criteria under Appellate Rule 9(c) to qualify for a stay of imposition of sentence pending appeal. A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court=s discretion. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

Defendants must provide the court with facts upon which to assess whether they pose a flight risk, since this determination is a prerequisite to a consideration of the merits of their stay on appeal. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

The length of the sentence imposed may provide a defendant with substantial motivation to avoid the court=s jurisdiction and make him a flight risk. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

Defendants must provide the court with facts upon which to assess whether they pose a danger to the community. The nature of the crime itself may indicate that the defendant is a danger to the community. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

When the court is unable to analyze the merits of the motion to stay and release from custody without further information and evidence being submitted by the defendants, the defendants have failed to establish eligibility for relief as set forth in Appellate Rule 9(b) and (c), and their motion to stay and for release from custody will be denied. FSM v. Shiro, 22 FSM R. 120, 123 (Chk. 2018).

6 F.S.M.C. 906 gives the court authority to stay the execution of a sentence pending appellate review, but nothing in 6 F.S.M.C. 906 specifically authorizes the court to grant a stay pending the review of a writ of habeas corpus petition, and there is no authority in Titles 4 and 6 of the 2014 FSM Code or the FSM Rules to stay execution of sentence pending a habeas corpus proceeding. FSM v. Wolphagen, 22 FSM R. 237, 238 (Pon. 2019).