

CIVIL RIGHTS

Discrimination as it is experienced in the United States is not the same as is experienced in Pohnpei. Therefore, the decisions of this court will consider decisions of the United States and other common law jurisdictions, but the court will only apply them as may be appropriate in the individual circumstances. Paulus v. Pohnpei, 3 FSM R. 208, 215 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, ' 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 244 (Pon. S. Ct. Tr. 1987).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, ' 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM R. 179, 190 (Pon. 1991).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States court decisions under 42 U.S.C. ' 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. Alep v. United States, 6 FSM R. 214, 219 (Chk. 1993).

The FSM civil rights law is intended to provide an effective remedy to FSM citizens when their constitutional rights are violated. A fundamental role of government, be it state or national, is to safeguard those rights. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Because of the similarity between the U.S. civil rights statute and 11 F.S.M.C. 701, FSM courts should consider the decisions of the United States in arriving at a decision, without being bound by them. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Civil rights are guaranteed to all FSM citizens under the Declaration of Rights, which is Article IV of the FSM Constitution. Congress conferred a cause of action for violation of civil rights by enacting 11 F.S.M.C. 701 *et seq.*, pursuant to subsection (3). Davis v. Kutta, 9 FSM R. 565, 568 (Chk. 2000).

A deprivation of rights under the FSM Civil Rights statute requires a finding of willfulness. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM R. 601, 603 (Pon. 2000).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 and ' 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 and ' 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

The FSM Supreme Court exercised pendent jurisdiction over a wrongful death claim, a state law cause of action when the plaintiffs' claim for civil rights violation under 11 F.S.M.C. 701(3) arose from the same nucleus of operative fact so as to create the reasonable expectation that the claims would be tried in the same proceeding. Estate of Mori v. Chuuk, 11 FSM R. 535, 537 (Chk. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A state law cannot extinguish rights granted by an FSM statute, 11 F.S.M.C. 701 (civil rights cause of action), pursuant to rights guaranteed in the FSM Constitution, which is the supreme law of the land. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A false imprisonment claim is separate and distinct from a civil rights claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary elements of one or both of his two distinct claims and because at this

junction the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM R. 178, 185-86 (App. 2005).

By not raising it until five years after relevant events, Pohnpei waived the cholera epidemic as a defense to its failure to insure that the plaintiff was taken before a judicial officer within 24 hours of arrest. But it would not make a difference even if the defense of the cholera epidemic were considered, when Pohnpei presented no showing of a causal link between the cholera epidemic and Warren's being held in jail for 632 hours. Since jail staff was not reduced as a result of the epidemic, nor did any other epidemic-related factor prevent Warren from being taken before a magistrate within 24 hours of arrest. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

The civil rights statute, 11 F.S.M.C. 701, is a part of the National Criminal Code and became effective July 12, 1981. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

FSM civil rights law is derivative of the body of federal civil rights law in the United States, particularly 42 U.S.C. ' 1983 and cases interpreting that statute. Annes v. Primo, 14 FSM R. 196, 206 n.6 (Pon. 2006).

Civil Rule 8(a)'s purpose is to put the opposing party on notice of the nature of the claim against it. Its pleading requirements are interpreted liberally, and a claim that alleges facts sufficient to put the defendant on notice as to the nature and basis of the claim being made sufficiently complies with the rule. Thus, while a decision by policy-making officials causing the alleged violations is a necessary element of the claim, a count claiming due process violations satisfies the pleading requirement when a set of facts could be proven in regard to the vessel's stop and seizure and later detention that would support the due process claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 372 (Chk. 2006).

While a policy-making official's decision causing the alleged violations is a necessary element of a due process claim, that, at the litigation's start, the claimant might not know which policy-making official decided what does not mean that he has failed to state a claim. It may be that after discovery and trial, he might not be able to prove this element and so his claim will fail, but before the government has answered, all he needs to do is put the government on notice as to the claim's nature. Thus the court cannot say that no set of facts that could be proven would not support this claim and will therefore not dismiss it for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Since the FSM civil rights statute is based upon the United States model, the FSM Supreme Court should consider United States jurisprudence under 42 U.S.C. ' 1983 and ' 1988 for assistance in determining the intended meaning of, and governmental liability under 11

F.S.M.C. 701(3). Robert v. Simina, 14 FSM R. 438, 443 n.1 (Chk. 2006).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Since the FSM civil rights statute is based on the U.S. model, the FSM Supreme Court should consider U.S. jurisprudence under 42 U.S.C. ' 1983 and ' 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 and ' 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

It would be a gross disservice to the interests of justice not ever to have a hearing on the issue of damages for a successful civil rights claim and when the trial court was silent as to this particular issue, the trial court cannot have foreclosed the claimant's right to a hearing on the actual damages flowing from the civil rights violation, so that the matter will be remanded to the trial court for further determination as to actual damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 438 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (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).

Because the FSM civil rights statute is based on the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 and ' 1988 for guidance in determining 11 F.S.M.C. 701(3)'s intended meaning and governmental liability thereunder. Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM

Supreme Court may consider U.S. jurisprudence under 42 U.S.C. ' 1983 and ' 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The limitations period for many types of civil rights lawsuits against Chuuk is two years, but for back pay claims it is six years. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

In addition to being potentially criminally liable to and subject to punishment by the FSM for the violation of 11 F.S.M.C. 701(1), a defendant could potentially also be civilly liable to the alleged victims in a suit under 11 F.S.M.C. 701(3). Three major differences exist between the criminal case and any potential civil case – in a civil case 1) the alleged victim(s) would be the plaintiff(s); 2) the burden of proof would be lower (preponderance of the evidence as opposed to beyond a reasonable doubt); and 3) the element of willfulness would not be required to establish civil liability. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Since the FSM statute, 11 F.S.M.C. 701(3), is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Municipalities cannot make civil rights claims against the state of which they are a part. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

Since the FSM civil right statute is based on the United States statute, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

Political subdivisions generally are held to lack constitutional rights against the creating state. Onanu Municipality v. Elimo, 20 FSM R. 535, 542 (Chk. 2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. ' 1983 and ' 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Jacob v. Johnny, 20 FSM R. 612, 617 n.3 (Pon. 2016).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected, and must therefore also have other due process rights. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

A municipality does not have any national constitutional rights or national civil rights that it may enforce against the state of which it is a part. Kitti Municipality therefore cannot raise an FSM civil rights or constitutional claim against Pohnpei, the state of which it is a part, or against one of Pohnpei's state agencies. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

Since the court must dismiss the action whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court will dismiss a civil rights action by a municipality against the state without prejudice to any future action in the state court. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

The FSM Supreme Court has held it may exercise jurisdiction over appeals from state administrative agencies when those appeals have included due process violation and civil rights claims arising under the FSM Constitution. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

The due process clause may only be invoked through state action. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

A state governmental agency, entity, or subdivision does not have any national constitutional rights or national civil rights that it may enforce against the state (or one of its agencies) of which it is a part or which created it. Thus it cannot raise an FSM civil rights or constitutional claim against the state of which it is a part, since it has no such rights against the state that created it. This includes the constitutional right not to be subjected to a bill of attainder. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A prevailing party is one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

In any civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. A plaintiff in a civil rights action, who is awarded nominal damages, is a prevailing party, and as a prevailing party, that plaintiff is entitled to its fees and costs. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

When the plaintiff was not the prevailing party in the court action and was therefore not awarded nominal damages because it had prevailed in administrative review, the plaintiff is not entitled to civil rights damages even though the FSM withdrew its letters closing the plaintiff.

New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

– Acts Violating

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM R. 247, 250 (Kos. 1986).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM R. 139, 144 (Chk. S. Ct. Tr. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 208 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury,

it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Liability for failure to inform a person of the charge for which he is being arrested will not be imposed when he knew was dealing with police who could arrest him, that he was likely to be arrested and why. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Wilful and malicious deprivation of a person's due process rights to notice and an opportunity to be heard, are a violation of that person's civil rights. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

It is a crime, under 11 F.S.M.C. 701(1), to willfully, whether or not acting under color of law, deprive another of, or injure, oppress, threaten, or to intimidate another in his free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM's Constitution or laws. A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 is civilly liable to the party injured. The element of willfulness is not required for the civil liability. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411 (App. 2000).

A detainee may be deprived of his civil rights in violation of 11 F.S.M.C. 701(3) by the arbitrary and purposeless denial of medical care. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

Deliberate indifference to a detainee's medical needs is policy when there is no training which would prepare a shift supervisor or other officers to evaluate an illness's or injury's severity and the decision to refer to the hospital resides in the shift supervisor's unlimited discretion. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A detainee has a civil right to be free of excessive force while detained in the custody. Use of excessive force may constitute a battery. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

The state violates a detainee's civil rights to appropriate care while detained through its use of untrained and inexperienced trainees as jailers, failure to supervise those trainees, and failure to refer an injured detainee for medical care. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A detainee's civil right to appropriate care while detained is violated by a jailer's false report of the extent of the detainee's injury which prevented a possible medical referral. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Violating a person's civil right to be free from excessive force while detained by the municipal police, is a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM

R. 130, 135 (Chk. 2003).

A detainee has a civil right to be free of excessive force while detained in the custody. The use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

The unilateral cancellation of a foreign investment permit in derogation of the procedures provided for under Kos. S.C. ' 15.308(10) is arbitrary and grossly incorrect, and as such constitutes a violation of the national civil rights statute. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The actions of corrections officers in refusing to permit the plaintiff to use the phone to call an attorney or to contact one at his request; in refusing to allow the plaintiff to telephone his family or to contact them at his request and in refusing to permit his wife to speak to him when she called the jail; and in failing to insure that the plaintiff was brought before a judicial officer within 24 hours of his arrest constituted violations of 12 F.S.M.C. 218. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

That the plaintiff was not informed at or before the time of his arrest why he was being arrested constituted a violation. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

Corrections officers' failure to permit the use of restroom facilities while he was in jail and to provide him with food and water while he was in their custody was an inhumane condition of confinement constituting cruel and unusual punishment. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

When it was the Pohnpei Department of Public Safety's stated policy not to deny an arrested person the right to see family members or counsel at reasonable times; not to unreasonably refuse to an arrested person the right to use the telephone to call family members or counsel; and to insure that within 24 hours of arrest the arrested person was either released or charged and taken before a qualified magistrate, but when the actual policy was that arrestees could not see family members; that arrestees could make phone calls to or meet with a lawyer, but could not receive phone calls from or make phone calls to family members, except in emergency situations such as funerals, the restrictions on contact with family members violated both the department regulations and 12 F.S.M.C. 213(2) and (3). The corrections officers' actions in denying the plaintiff the opportunity to contact family members; in refusing him permission to call a lawyer (except on the last day of his confinement); in failing to permit him to use the restroom; and in failing to provide him with food were products of decisions and action of persons with the final policy-making power concerning prisoners in that time and place. This constituted the actual policy at relevant times irrespective of stated policy and the failure to

undertake any investigation of the plaintiff's complaints resulted in the ratification by the chief policy-maker of the challenged actions. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491-92 (Pon. 2005).

When no investigation of the plaintiff's complaints were ever undertaken, nor were any officers disciplined; when none of the officers who participated in the violation of an individual's civil rights were either disciplined or had criminal charges brought against them, and where all of the officers who participated were back on duty the next day, the police officers' conduct was ratified as official policy of the Pohnpei Department of Public Safety. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

To be civilly liable for civil rights damages the element of willfulness is not required. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 494 (Pon. 2005).

An illegal arrest is actionable under 11 F.S.M.C. 701(3). Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 (Pon. 2005).

Even if the 24-hour deadline to bring a defendant before a court or release him were interpreted to mean within a reasonable time, holding a person in jail for 632 hours without an appearance before a judicial officer will subject the state and its department of public safety to civil liability. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

When the only food provided the plaintiff during the approximately 632 hours in jail was three donuts and a jar of water given to him by a prisoner and he was permitted to use the restroom only once during that time, and was obliged to urinate through the window, and to defecate into the pages of a magazine which he then discarded through the window, these inhumane conditions of confinement constitute cruel and unusual punishment, in derogation of the Declaration of Rights of the FSM Constitution. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

In the FSM, claims of police brutality or excessive force generally implicate due process, rather than equal protection. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The express language of 11 F.S.M.C. 701(3) prohibits persons from depriving others of their civil rights. It does not apply only to states. Annes v. Primo, 14 FSM R. 196, 203 (Pon. 2006).

When a plaintiff alleges that he was arrested without cause, not that the officer failed to inform him of the grounds for the arrest, the difference in the two allegations is more than semantic, because a plaintiff may claim that an arrest was without just cause even when the arresting officer recites the grounds for the arrest. Whether there was cause for the arrest presents a factual matter that cannot be resolved at the Rule 12(b)(6) motion stage of the proceedings. Annes v. Primo, 14 FSM R. 196, 203-04 (Pon. 2006).

A claim of failure to inform an arrestee of his rights and denying him legal counsel and access to the courts is a statutory claim, not a constitutional one. An arrested person's rights are codified at 12 F.S.M.C. 218, which provides that, at the time of arrest, a police officer must inform the arrestee of her rights, including the right to counsel, prior to any questioning and that the officer must either release the arrestee or bring her before a judicial officer within twenty-four hours of the arrest. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

A plaintiff's failure to specify the appropriate level of care and to prove that the level of care provided by the state was deficient does not warrant dismissal of his claim when the plaintiff has alleged injury by a state police officer and failure to train by the state because the plaintiff must be given the opportunity to put forth evidence in support of his claim and a motion to dismiss may be granted only if it appears to a certainty that no relief could be granted under any facts which could be proven in support of the complaint. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

A battery or wrongful death, by itself, does not constitute a civil rights violation. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Although the plaintiffs contend that they were not drunk but merely had hangovers and that they could not be arrested for being hungover, the police, based on what they personally could see, hear, and smell, had probable cause to believe that the plaintiffs were under the influence of alcohol in public and had probable cause to arrest the plaintiffs. Whether the plaintiffs were actually intoxicated or just hungover is irrelevant since the police had probable cause to believe they were intoxicated. Thus, the plaintiffs' arrest and transportation to the state jail on Weno did not violate their civil rights. Walter v. Chuuk, 14 FSM R. 336, 339-40 (Chk. 2006).

Confining a person in dangerously unsanitary conditions, which represents a broader government-wide policy of deliberate indifference to the person's dignity and well-being, is a failure to provide civilized treatment, in violation of detainees' due process protections, and renders the state liable under 11 F.S.M.C. 701(3). Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

The state has a duty to protect the persons it has confined from themselves and each other and violating a person's civil right to be free from excessive force while detained in a jail, is a violation of 11 F.S.M.C. 701(3). The state can violate that duty by failing to intervene and stop the prisoners' attacks on the arrestees. Walter v. Chuuk, 14 FSM R. 336, 340 (Chk. 2006).

When the decedent's civil right to be free from excessive force while a prisoner in Weno municipal jail was violated, this violation and the defendants' failure to monitor the plaintiff prisoner was the proximate cause of his wrongful death. The defendants' failure to monitor may also show a deliberate indifference to the prisoner's medical needs, which is also a violation of the FSM Civil Rights statute. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A prisoner has a civil right to be free of excessive force while in custody. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

When a complaint alleges that the plaintiff was denied equal protection of the laws, the suit will be deemed a private cause of action under 11 F.S.M.C. 701 for violation of civil rights guaranteed under the FSM Constitution even though the statute is not expressly cited in the complaint. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 78 (Pon. 2007).

Plaintiffs' due process civil rights were violated when police officers beat them without reason or justification. Further due process violations occurred when one of them was detained and arrested without being told the reason, and when he was held in police custody for six hours. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws and a private cause of action is provided for any such violation. Due process is a right secured by the FSM Constitution. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

When a person is unlawfully detained against his will, a civil wrong is committed for which he may seek redress. Such a claim is separate and distinct from a civil rights claim, but, at the same time, such a claim may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

"Color of law" means the appearance or semblance without the substance of legal right. Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state is action taken under "color of state law." FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 n.3 (Pon. 2009).

To establish the FSM's liability under 11 F.S.M.C. 701, a party must allege and prove that it: 1) had a protected right; 2) FSM officials or employees acted to deprive that party of the right; and 3) the FSM officials or employees acted pursuant to governmental policy or custom, or were responsible for final policy-making. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 483 (Pon. 2009).

When a civil rights counterclaim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpei, 16 FSM R. 567, 576 (Pon. 2009).

When a plaintiff has alleged violation of her due process rights, but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. When, at trial, the plaintiff did not present evidence that she was treated differently than any other person in the same class and did not present evidence that she was denied notice and an opportunity to be heard, the state is not liable to her on the claims of denial of equal protection of the laws, violation of due process, and violation of her civil rights. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Defendants did not violate the plaintiff's civil rights when neither defendant was a government agency or was claiming to act under color of law or injured, oppressed, threatened,

or intimidated the plaintiff's exercise or enjoyment of its civil rights and when neither was responsible for giving the plaintiff notice and an opportunity to be heard; neither prevented the plaintiff from being given notice; and neither injured, oppressed, threatened, or intimidated the plaintiff to prevent it from having an opportunity to be heard. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When a defendant is not a governmental entity, is not someone alleged to have acted under color of law, and is not a private person (not acting under color of law) who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, the claim against that defendant is not a civil rights claim. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

There are at least three kinds of civil rights violations: 1) cases involving physical injury or deprivation of liberty; 2) cases involving deprivation of preexisting property; and 3) cases involving deprivation of statutorily vested property rights, such as entitlements and government employment. Stephen v. Chuuk, 17 FSM R. 453, 462 (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).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a civil rights or due process violation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

The police, as state officers, have no constitutional duty to rescue persons because due process considerations are not implicated when the state fails to help someone already in danger. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

A police officer's threat of arrest does not constitute a violation of constitutional rights, and merely investigating a suspicious occurrence or merely patrolling the area where someone fled is not a violation of any clearly established constitutional right. Ruben v. Chuuk, 18 FSM R. 425, 429 (Chk. 2012).

The FSM civil rights statute, 11 F.S.M.C. 701(3), creates a private cause of action for damages against any person, including a state government, who deprives another of his civil rights guaranteed by the FSM Constitution. Chuuk therefore liable to a prisoner for depriving him of his civil right to be free from cruel and unusual punishment and to due process of law when it kept him in jail for 161 days after his sentence ended. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A former employee's allegation that his termination violated public policy under the FSM Constitution and the right to be free of religious discrimination does not state a cause of action. To the extent that any defendant could be held civilly liable for the violation of public policy, it would be under 11 F.S.M.C. 701(3), and the public policy as expressed in the civil rights statute.

George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

When a plaintiff does not cite any particular constitution or specific statute, but does generally assert that when she was terminated her due process rights were violated, the court may hear, consider, and rule on her claim that her termination as Director of Education was unlawful since she was not afforded due process. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

When the plaintiff's claims for false imprisonment, for destruction of standing in community, and for wrongful invasion of privacy – false light were all predicated on his mistaken supposition that he was entitled to retain another person's pigs until compensated and that therefore his arrest was unlawful, the defendants are entitled to summary judgment on these claims as well as summary judgment on his civil rights violations claims insofar as those claims are predicated on his arrest being unlawful. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

A customer of a government-owned utility does have a due process right to proper notice before the utility is disconnected. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

A complaint alleging that a public utility tortiously breached its duty to him and violated his due process civil rights when its linemen disconnected his electrical power without notice, causing food spoilage and personal hardship and inconvenience, and that when its linemen, without warning, eventually reconnected his electrical power, it tortiously caused a sudden power surge resulting in damaged equipment, does not state a claim for an equal protection civil rights cause of action. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

The civil rights statute's purpose is to create a federal remedy for private parties, not government bodies. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

When the government has willingly deprived the plaintiffs of wages that they are entitled to without due process of law, it is civilly liable under 11 F.S.M.C. 701(3) for violating the plaintiffs' civil rights. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

When a civil rights claim neither alleges that the actions were pursuant to governmental policy or custom, nor that the actions were taken by officials responsible for final policy-making, it fails to state a claim upon which relief may be granted and will be dismissed because the plaintiffs fail to state a claim that their civil right to due process was violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

A private person can be liable for a civil rights violation and a private cause of action is provided for that violation when that private person commits an offense by willfully, whether or not acting under color of law, depriving another of, or injuring, oppressing, threatening, or intimidating another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM Constitution or laws. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

When there is no allegation that any defendant deprived either plaintiff of, or injured, oppressed, threatened, or intimidated either plaintiff in the free exercise or enjoyment of any right, privilege, or immunity secured to them by the FSM Constitution or laws, the plaintiffs fail to state a claim that their civil rights were violated. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

A court's long, unexplained delay or its failure to exercise its discretion within a reasonable time is an abuse of discretion that denies a right to procedural due process. Luhk v. Anthon, 22 FSM R. 69, 70 (Pon. 2018).

The right not to be defamed, libeled, or slandered is not a right guaranteed by the Constitution or by the civil rights statute. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

"Color of law" is the appearance or semblance without the substance of legal right. Apostol v. Maniquiz, 22 FSM R. 146, 149 n.1 (Chk. 2019).

When the defendant is not a governmental entity, is not alleged to have acted under color of law, and is not a private person (not acting under color of law) who injured, oppressed, threatened, or intimidated the plaintiff exercising or enjoying or having exercised or enjoyed any civil right, the plaintiff's claim is not a civil rights claim. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

When the plaintiff makes no allegations that would support an equal protection claim, the defendant may be granted summary judgment on that part of the plaintiff's civil rights claim. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

The court will deny summary judgment when it has previously held that if sewerage backflow rises above the level of mere negligence to the level of a public nuisance, it may constitute a taking of property without just compensation and the plaintiff claims that her possessory right to the land is a usufruct property right. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 158 (Chk. 2019).

A state governmental agency, entity, or subdivision does not have any national constitutional rights or national civil rights that it may enforce against the state (or one of its agencies) of which it is a part or which created it. Thus it cannot raise an FSM civil rights or constitutional claim against the state of which it is a part, since it has no such rights against the state that created it. This includes the constitutional right not to be subjected to a bill of attainder. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A breach of contract claim (or an alternative quantum meruit and quantum valebant claim) does not involve the deprivation of preexisting property or the deprivation of statutorily vested property rights, and most certainly does not involve physical injury or deprivation of liberty. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Pohnpei's nonpayment on a contract claim did not deprive the plaintiff of preexisting property or of statutorily vested property rights because his right to payment has not yet been determined and certainly was not protected and had not vested, and not only does the plaintiff not have a protected right, but he also does not allege that Pohnpei government officials had acted to deprive him of the right, and that these officials acted pursuant to governmental policy

or custom, or were responsible for final policy making. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

Previous court decisions have uniformly held that a governmental entity's breach of contract, without more, does not constitute a due process or a civil rights violation. Sonden v. Pohnpei, 22 FSM R. 465, 467 (Pon. 2020).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

A government official's decision or a governmental agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not, by itself, thereby automatically become a civil rights claim or violation (or entitle that party to skip or avoid administrative proceedings). Macayon v. FSM, 22 FSM R. 544, 556 (Chk. 2020).

A wrong or incorrect decision by a government official or body is not automatically a civil rights violation entitling the aggrieved party to relief under 11 F.S.M.C. 701(3). Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

A government official's decision or a government agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not automatically entitle that party to skip or avoid administrative proceedings and head straight to court alleging a civil rights violation so that the court will apparently have jurisdiction and the administrative agency will not. Thus, an additional pleading of a civil rights cause of action will not automatically preclude a remand (and a stay) to exhaust administrative proceedings. Basu v. Amor, 22 FSM R. 557, 567-68 (Pon. 2020).

– Persons Liable

A municipality which employs untrained persons as police officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM R. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. Alaphen v. Municipality of Moen, 2 FSM R. 279, 280 (Truk 1986).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word

person would include governmental bodies. Plais v. Panuelo, 5 FSM R. 179, 204-05 (Pon. 1991).

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM R. 179, 205-06 (Pon. 1991).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM R. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. Plais v. Panuelo, 5 FSM R. 179, 211 (Pon. 1991).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

Government entities are included in the definition of the word "person" as used in the statute governing civil liability of persons for the violation of another's civil rights. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Persons liable for civil rights violations include government entities. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

Statute law confers a private cause of action for damages against any person who deprives another of his civil rights. The word "person" embraces governmental organizations, including state governments. Louis v. Kutta, 8 FSM R. 208, 211 (Chk. 1997).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 296 (Pon. 1998).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated, and imposes civil liability, including costs and attorney fees, on a person who deprives another of any right or privilege protected under that Section. The national government is a "person" to whom such civil liability may attach under

this statute. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

When none of the defendants is a governmental entity, or someone alleged to have acted under color of law, or a private person, not acting under color of law, but who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, it is not a civil rights case. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A Public Safety Director, as the policy maker for the department, may, by failing to investigate the issue of accountability for a detainee's death, ratify the shift supervisor's and the jailer's actions. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

A jailer is not liable for the arbitrary and purposeless failure to refer a detainee for medical treatment when he referred the matter to the shift supervisor who had the authority to authorize the referral because he could not have done anything more. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Persons liable for civil rights violations include government entities. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM R. 223, 225 (Kos. 2003).

When a canceled foreign investment permit was ultimately reinstated, it renders moot the cancellation itself and leaves no administrative remedy for the permit holder to pursue. What then remains as a live court issue is the arbitrary and grossly incorrect manner in which the permit was originally canceled. This conduct constitutes a violation of 11 F.S.M.C. 701 *et seq.*, and entitles the plaintiff to a summary judgment. Wortel v. Bickett, 12 FSM R. 223, 226 (Kos. 2003).

The Kosrae Office of the Attorney General enforces state penal laws, delegating enforcement to a department in its discretion. Thus the Kosrae attorney general is an individual with responsibility for determining final policy with regard to the matters committed to that office, and as such is liable on a personal basis if he violates a person's constitutional rights through making a deliberate choice to follow a course of action from among various alternatives. Wortel v. Bickett, 12 FSM R. 223, 226-27 (Kos. 2003).

Governmental entities, such as the State of Pohnpei and the Pohnpei Department of Public Safety, are "persons" within the meaning of 11 F.S.M.C. 701 *et seq.* Warren v. Pohnpei State

Dep't of Public Safety, 13 FSM R. 483, 491 (Pon. 2005).

A person who deprives another of any right or privilege protected by the FSM Constitution or laws will be civilly liable to the party injured in an action at law. The statute confers a private cause of action and it is plain that governmental entities such as the State of Pohnpei and the Pohnpei Department of Public Safety are "persons" within the statute's meaning. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

The state and its department of public safety are subject to civil liability for denying an arrestee the opportunity to contact either family members or an attorney. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A state may be held liable if, through subsequent conduct, it ratifies the tort of an individual defendant. Annes v. Primo, 14 FSM R. 196, 204 n.4 (Pon. 2006).

A state may be held liable for alleged civil rights violations when policymakers are involved in the challenged action and have made a deliberate choice to follow a particular course of action. This type of liability is not vicarious; it is direct, but when a plaintiff has not alleged that an individual with policymaking authority was involved in his injury, there is no basis upon which to impose liability on the state for a police officer's alleged civil rights violations. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a state may not be held vicariously liable for the due process violations of its agents, it may be held liable in both tort and civil rights for failure to train. Annes v. Primo, 14 FSM R. 196, 205 (Pon. 2006).

Although a private person, not acting under color of law, may, under 11 F.S.M.C. 701, be held liable for civil rights violations if he injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, when the plaintiffs' complaint alleges no such actions and does not allege that the defendants were acting under color of law or were acting as agents of a government when committing the battery, the complaint does not allege a civil rights claim. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The Weno Chief of Police was the policy maker for the Weno municipal police and by his failing to investigate the issue of accountability for prisoner's death in jail, he ratified the jailer's actions or inactions. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

A person who, whether under the color of law or not, violates another's equal protection

rights as guaranteed by sections 3 or 4 of Article 4 of the FSM Constitution would be civilly liable to the injured party. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

Since the College of Micronesia was created by national statute which gave it its nature and functions, and is a national government agency, and since the national government is a person for the purposes of the civil rights statute, the College is a person under the civil rights statute and would be civilly liable to a plaintiff if it violated that plaintiff's equal protection rights guaranteed by the FSM Constitution. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

A governmental entity is liable for battery by its police officers when the entity ratified the battery by failing to charge the officers and by the lack of any internal discipline whatsoever and a governmental entity that employs untrained police officers and permits their use of excessive force will be held responsible for the officers' unlawful acts for violation of the plaintiffs' civil rights. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

Since the FSM drew from United States counterparts both the civil rights statute the plaintiffs are suing under and the Rules of Civil Procedure, including Rule 25(d), it is appropriate to consult U.S. sources in determining whether the plaintiffs may sue someone in his former official capacity or whether Rule 25(d)(1) automatically substituted the current office-holder in his stead. Herman v. Bisalen, 16 FSM R. 293, 295 (Chk. 2009).

A suit against an offender in his or her official capacity is treated as a claim against the entity that employs that officer, but a public official that leaves office may still be liable for money damages in his or her personal capacity. Thus, an official capacity claim against a former official is meaningless unless it continues as a claim against that person's successor in office in the successor's official capacity. The office continues and is responsible for, and is presumed to have knowledge of, its earlier acts. Herman v. Bisalen, 16 FSM R. 293, 296 (Chk. 2009).

In a civil rights action under 11 F.S.M.C. 701, a private person who is not acting under color of law but who deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia, may be held civilly liable under 11 F.S.M.C. 701(3) for that violation. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Eot Municipality v. Elimo, 20 FSM R. 482, 491 (Chk.

2016).

While it is true that a municipal government is a "person" against whom relief can be (and has been) sought under the civil rights statute, a municipal government is not a person that can seek relief under the civil rights statute. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

A municipality, as a matter of law, cannot maintain a civil rights claim against the state of which it is a political subdivision. Onanu Municipality v. Elimo, 20 FSM R. 535, 544 (Chk. 2016).

An autonomous agency cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity, and not a "state actor" for due process purposes. Santos v. Pohnpei, 21 FSM R. 495, 500 (Pon. 2018).

When the court finds that an entity operated independent of the state government, it is not a state actor for due process purposes, and the plaintiff will not prevail on a claim against it for violation of civil rights pursuant to 11 F.S.M.C. 701(3). Santos v. Pohnpei, 21 FSM R. 495, 501 (Pon. 2018).

– Remedies and Damages

An injured victim is entitled to recover for mental anguish, including humiliation, resulting from unlawful conduct in violation of the victim's civil rights. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

Compensatory damages awarded a party for the violation of civil rights includes reasonable attorney fees and costs of suit. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

State autonomy should be as wide-ranging as possible, but it is subject to the limits of the FSM Constitution. A state may not exceed the scope of its power by reliance on a state constitutional provision where to do so prevents enforcement of national civil rights legislation. Louis v. Kutta, 8 FSM R. 208, 212-13 (Chk. 1997).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national

execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM R. 208, 213 (Chk. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

When a state government, acting by its agents, steps out of its role of protector of a citizen's constitutional rights, and violates the very rights it is meant to guard, a money judgment is the only practical means by which the state can compensate its citizens for the damage it inflicts. Louis v. Kutta, 8 FSM R. 312, 317 (Chk. 1998).

Under 11 F.S.M.C. 701, a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 701(3) to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM R. 338, 341 (Chk. 1998).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

Although Chuuk state law does not appear to recognize survival causes of action, the right to damages for civil rights violations under national law survives a victim's death. If it did not, the purpose of the civil rights cause of action would be thwarted. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The purpose of tort law is to afford a victim compensation for injuries sustained as the result of the unreasonable or socially harmful conduct of another. This is true whether the tort is statutorily created, as are the civil rights claims under 11 F.S.M.C. 701(3), or is a creature of the common law, as is a battery cause of action. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Although a civil rights violation claim and a battery claim are separate causes of action, when they arise from the same incident and they cause the same personal injury and when the damage award for the civil rights violation fully compensates the plaintiff for his personal injury, the court cannot award additional damages for the battery because such an award would constitute double recovery and would be a windfall and overcompensate the plaintiff. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

A court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause the state to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue, 11 F.S.M.C. 701. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a

garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn mockery. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM R. 535, 542 (Chk. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM R. 545, 549 (Chk. 2003).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM R. 3, 11 n.5 (Chk. 2003).

A state trial court order that does not address the question of national court judgments

based on the violation of civil rights guaranteed under the FSM Constitution cannot provide guidance with respect to enforcement of the FSM Supreme Court civil rights judgments. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Civil rights causes of action survive the victim's death because if it did not then the national civil rights statute's purpose would be thwarted. Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

Civil rights damages may include damages for the victim's pain and suffering before his death. Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a contingency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq.*, the national civil rights statute. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq.*, and it is for judgments based on such claims that the court has issued writs of garnishment against the state. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial

court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM R. 178, 186 (App. 2005).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

When the acts that comprise the false imprisonment tort are also the acts that constitute the civil rights violations, the court will not make a separate award of damages for this tort, since to do so would result in a double recovery. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 493 (Pon. 2005).

When the plaintiff was unlawfully denied the right to make contact with anyone outside the jail, but his right to communicate with family members was further compromised when his wife was not permitted to speak with him on the telephone, the court will award \$500; when he was confined in unconstitutional conditions of confinement, the court will award \$10 an hour, or \$635 for 632 hours; for the residual effects of his detention that he experienced during the two weeks after he was released, including stomach problems and lingering numbness in his hands resulting from being handcuffed, the court will award \$150; for being held in excess of 24 hours, an unambiguous right, the court will award \$3,000 for the more than two and a half days in jail (a separate award for not being brought before a judge within the statutorily-required time); an additional \$500 resulting from the unlawful arrest and \$200 awarded for an unlawful search. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499-500 (Pon. 2005).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

An hourly rate of \$120 is a reasonable hourly rate for trial time in civil rights action, and a rate of \$100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of \$100 an hour for that time instead of the \$120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney's fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he

is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Damages under the civil rights act generally include only compensatory damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walter v. Chuuk, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Walter v. Chuuk, 14 FSM R. 336, 341 (Chk. 2006).

A civil rights cause of action survives the victim's death because, if it did not, the national civil rights statute's purpose would be thwarted. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An employee of a state or local government who is discharged in violation of the civil rights statutes has a duty to actively look for and accept any reasonable offer of employment, otherwise back pay damages cannot be awarded. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When there was no evidence of physical injury to any plaintiff or of any physical manifestation of emotional distress by any plaintiff, there can be no award of damages for pain and suffering even if the plaintiffs had proven they had been wrongfully discharged in violation of their civil rights. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

In order to recover compensatory damages, the plaintiffs must prove actual injury from the civil rights deprivation. When, if proper procedure had been followed, the plaintiffs still would have been terminated from their positions, there is no actual injury to compensate with back pay or other benefits. Nominal damages may, however, be awarded for the deprivation of the important right to procedural due process. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously

observed; but at the same time, it remains true to the principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivation of rights. Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 shall be civilly liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, without regard to whether a criminal case has been brought or conviction obtained. In an action brought 11 F.S.M.C. 701, the court may award costs and reasonable attorney's fees to the prevailing party. Wainit v. FSM, 15 FSM R. 43, 46 n.1 (App. 2007).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both questions is yes, the judge was not acting in complete absence of all jurisdiction, even when he had clearly acted in excess of his jurisdiction, and the judge was therefore immune from any suit for compensatory or punitive damages for his actions, but that does not end the inquiry. When the plaintiff had obtained permanent prospective injunctive relief against the judge under the civil rights act, it was entitled to the attorney's fees and costs incurred in obtaining that relief in that case, but not for any expenses incurred in the state court case in which the judge had exceeded his jurisdiction even though the FSM Supreme Court had to enjoin him from conducting any further proceedings in it. Ruben v. Petewon, 15 FSM R. 605, 608 (Chk. 2008).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

Reasonable travel costs are allowable when there is a showing that no counsel is available on the island where the litigation took place, but photocopying expenditures are generally disallowed, especially here where it cannot be determined what portion of those expense were incurred in bringing this action, and state court appellate filing fees are also disallowed since they are another court's filing fees and recoverable in that court. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Although a compelling state interest exists in protecting the state from garnishment and

execution of its funds as governments cannot effectively administrate essential public services with litigants constantly raiding their coffers, but since Congress has created a statutorily-based action for civil rights violations as these violations are particularly egregious in that they infringe upon what we commonly recognize as unalienable human rights, what must be struck is an adequate balance between protecting a government's ability to maintain sufficient funds to operate and the ability to hold the government accountable for violating its citizens' most basic rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM civil rights statute is intended to provide an effective remedy when constitutional rights are violated. A fundamental role of the government, be it state or national, is to safeguard those rights. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

A statute is unconstitutional to the extent that it prohibits garnishment of state funds to satisfy a civil rights judgment, including civil rights judgments involving purely economic damages as well as those involving physical injury damages. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

Although an arrestee, who was not informed of her rights to access to counsel when she was handcuffed, was told her full rights at the police station, this does not excuse the police's failure to advise her of rights regarding to access to counsel on the scene when she was first placed in handcuffs. Since the arrestee was not harmed by the failure to advise her, when she was first placed in handcuffs, of rights regarding to access to counsel, the state is liable to her for nominal damages in the amount of one dollar. Berman v. Pohnpej, 16 FSM R. 567, 576 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The civil rights statute creates a civil cause of action, 11 F.S.M.C. 701(3), for the violation of any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An \$100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this

absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government when the underlying cause of action is based on a violation of the national civil rights statute, but it has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. The rationale for the issued writs was the FSM Constitution's Supremacy Clause, which must control regardless of a state constitutional provision, or national law, to the contrary. Kama v. Chuuk, 18 FSM R. 326, 334 (Chk. S. Ct. Tr. 2012).

Regardless of whether civil liability can be imposed for failing to inform an arrestee of her rights or for failing to inform her of the cause and authority of her arrest, civil liability will be imposed when it was illegal to arrest her without a warrant where she was arrested. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

In civil rights cases, the FSM Supreme Court has ordered garnishment of civil rights judgments from state funds held by the national government when civil rights judgments have

gone unpaid for a long period of time. Alexander v. Pohnpei, 19 FSM R. 133, 135 (Pon. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

A false imprisonment claim is separate and distinct from a civil rights claim, but, at the same time, it may serve as a basis for deprivation of liberty under the FSM civil rights statute. The relevant concern in this regard is that damages should not be awarded for both claims, since to do so would be to permit a double recovery. Kon v. Chuuk, 19 FSM R. 463, 466-67 (Chk. 2014).

Valuing the loss of a person's liberty interest because he was subjected to the cruel and unusual punishment of being forced to remain in jail for 161 days after his sentence had ended, is, like trying to calculate damages for pain and suffering, difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated. It was enacted to safeguard the rights guaranteed to all FSM citizens under Article IV of the FSM Constitution. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

When a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

An FSM statute, 11 F.S.M.C. 701(3), creates a private right of action against any person, including governmental entities, for the violation of rights guaranteed by the Constitution. Palasko v. Pohnpei, 20 FSM R. 90, 94 (Pon. 2015).

In a civil rights case, even if the plaintiff has failed to prove any actual damages, the court can award nominal damages because of the importance of vindicating certain fundamental rights, but when there was no evidence introduced from which the court could draw the inference that the plaintiff's termination was the result of religious discrimination, there was thus no prima facie case made out on the civil rights claim. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals

whose constitutional rights have been violated. Santos v. Pohnpei, 21 FSM R. 495, 501 (Pon. 2018).

Actual damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

A monetary award is envisioned to compensate for actual losses which can be readily proved and the commensurate amount is to be based on the proven harm, loss or injury suffered by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534-35 (App. 2018).

When what the plaintiff needed to show, and did not, was that it would have undertaken the lot's development during the February through June 2005 time period, the evidence proffered by the plaintiff was deficient to be awarded the damages sought. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 535 (App. 2018).

Since the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process is generally actionable for nominal damages without proof of actual injury. And a plaintiff who is awarded nominal damages in a civil rights action is also entitled to his attorney's fees and costs. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 2018).

Procedural due process is a constitutional civil right covered by 11 F.S.M.C. 701. When the right to procedural due process has been violated and there are no provable, actual damages (thus the damages are only nominal), it is a civil rights violation for which attorney's fees and costs may be awarded. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

Since a plaintiff's civil rights cause of action survives the plaintiff's death, the original plaintiff's estate may maintain his claim after his death. Luhk v. Anthon, 22 FSM R. 69, 71 (Pon. 2018).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. Macayon v. FSM, 22 FSM R. 544, 556 (Chk. 2020).

A prevailing party is one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

In any civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party. A plaintiff in a civil rights action, who is awarded nominal damages, is a prevailing party, and as a prevailing party, that plaintiff is entitled to its fees and costs. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

When the plaintiff was not the prevailing party in the court action and was therefore not awarded nominal damages because it had prevailed in administrative review, the plaintiff is not entitled to civil rights damages even though the FSM withdrew its letters closing the plaintiff. New Tokyo Medical College v. Kephias, 22 FSM R. 625, 635 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephias, 22 FSM R. 625, 635 (Pon. 2020).