CONSTITUTIONAL LAW

A fundamental principle of statutory interpretation is that when a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When interpreting a statute, courts should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Tosie v. Tosie, 1 FSM R. 149, 157 (Kos. 1982).

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM R. 174, 180-81 (Truk 1982).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Constitutional issues should not be decided if the statute in question may be interpreted in such a way as clearly to conform with constitutional requirements. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

A court should not decide a constitutional issue when there remains a possibility that an administrative decision will obviate the need for a court decision. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this Constitution. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

An unconstitutional statute may not be redeemed by voluntary administrative action. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

Unnecessary constitutional adjudication is to be avoided. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Suldan v. FSM (II), 1 FSM R. 339, 357-58 (Pon. 1983).

Article III, sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

If a dispute properly may be resolved on statutory grounds without reaching potential constitutional issues and without discussing constitutional principles, the court should do so. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

When dealing with statutes, before discussing constitutional issues a court must first address any threshold issues of statutory interpretation which may obviate the need for a constitutional ruling. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the Federated States of Micronesia under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. United Church of Christ v. Hamo, 4 FSM R. 95, 103 (App. 1989).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM R. 308, 314 (App. 1992).

A statute is repealed by implication by a constitutional provision when the legislature, under the new constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

In the absence of any authority or compelling policy arguments the court cannot conclude that a law, the enforcement of which entails a harsh result, is unconstitutional, and can only note that the creation of potentially harsh results is well within the province of the nation's constitutionally empowered legislators. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 102, 104 (Pon. 1995).

A court should avoid unnecessary constitutional adjudication. Louis v. Kutta, 8 FSM R. 228, 229 (Chk. 1998).

Acts of Congress are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374, 387 (Pon. 1998).

Article I, section 1 of the Constitution defines the FSM's national boundaries, and section 2 defines the states' boundaries in the event marine resources revenues should accrue to the state wherein the resources are found, but the Constitution's framers did not intend to confer ownership of marine resources, or revenues derived from such resources, when they defined the state boundaries. Offshore marine resources, and the division between national and state power with respect to these resources, are addressed in other articles of the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 367-68 (Pon. 1998).

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

The framers' intent that the equidistance method be used to establish fair and equitable marine boundaries between the states in the event marine resource revenue should accrue to the state wherein the resources are found does not indicate state resource ownership because the Constitution explicitly provides for an event when such revenues would accrue to the state – when ocean floor mineral resources are exploited. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When the Constitution defined state boundaries, the Constitution's framers did not intend to confer on the states the ownership of the exclusive economic zone's resources or all the revenues derived from them. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 n.2 (App. 2000).

Because regulating the ownership, exploration, and exploitation of the exclusive economic zone's natural resources is a power expressly and exclusively delegated to the national government and because the incidental power to collect assessments levied pursuant to that delegated power is indisputably a national power, the power to disburse those funds is also a national power, except where the Constitution provides otherwise (such as in Article IX, section 6). Thus even were the states the underlying owners of the exclusive economic zone's resources, such a conclusion would not entitle the states to the exclusive economic zone's revenues except where the Constitution so provides. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431-32 (App. 2000).

Fishing fees are not assessed under the national government's constitutional authority to impose taxes on income. They are levied instead under the national government's constitutional authority to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution provides three instances of mandatory unconditional revenue sharing with the states, which the framers evidently thought enough. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The FSM Constitution does not apply to a lawsuit in a CNMI court over a transaction that occurred in Saipan. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting from these threats includes regulating the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

A litigant may assert a claim in state or local court based upon a right provided under both a state and FSM Constitutions, and if a state constitution grants fewer rights than the FSM Constitution, a litigant may rely upon and assert his rights under the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

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

The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Constitution contains no privileges and immunities clause. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Constitutional rights are generally prospective, not retroactive. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

– Amendment

The National Constitutional Convention is given broad authority to revise the very foundation of government, and every institution and office of government may come within its reach. Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of the people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers view a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making. Constitutional Convention 1990 v. President, 4 FSM R. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

An amendment to the Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment becomes part of the Constitution when approved by ¾ of the votes cast on that amendment in each of ¾ of the states. These are the only methods by which the Constitution may be amended. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

– Bill of Attainder

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substitution of a legislative for a judicial determination of guilt. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

A statute making all persons convicted of a felony in the Trust Territory courts ineligible for election to the FSM Congress does not constitute criminal punishment and does not substitute a legislative for a judicial determination of guilt and thus is not an unconstitutional bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

A case that alleges that a state law is, or contains, a bill of attainder in violation of the FSM Constitution is a claim that arises under the Constitution and over which the FSM Supreme Court may exercise jurisdiction. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The Constitution's prohibition of bills of attainder in the Declaration of Rights applies to all legislative bodies within the FSM, not just to the FSM Congress. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substituting a legislative determination of guilt for a judicial one. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

As the constitutional prohibition of bills of attainder bars all such legislative acts, if a state law is a bill of attainder, the FSM Supreme Court has the jurisdiction to strike it (or the part of it that is a bill of attainder) down as unconstitutional and to enjoin its enforcement. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (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 legislature's suspension of a state commission's activities does not constitute either a finding of guilt or an imposition of punishment on the commission's members. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 264 (Chk. 2019).

Punishment is a prerequisite to an act's being a bill of attainder. The determination of the existence of the punishment element of a constitutionally prohibited bill of attainder is dependent for resolution upon the facts and circumstances of individual cases. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

There are three tests to determine the existence of punishment element of a bill of attainder – the historical experience test, the functional test, and the motivational test. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

Under the historical experience test, the punishment element of a bill of attainder is met if the named individual or the easily ascertained group member is subjected to any of the penalties associated with bills of attainder or with bills of pains and penalties in England or in colonial or pre-Constitution America – namely death, imprisonment, banishment, or confiscation or forfeiture of property to the sovereign. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The punishment element of a bill of attainder can also be met under the historical experience test by barring designated individuals or groups from participation in specified employments or vocations, a mode of punishment commonly employed against those legislatively branded as disloyal. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The functional test for the punishment element of a bill of attainder looks beyond mere historical experience and analyzes whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

A legislature has furnished a nonpunitive legislative purpose for the statute's enactment when it has relied on its responsibility to control the state's finances and expenditures and to align those expenditures with the state's available revenues. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 265 (Chk. 2019).

The third recognized test for the punishment element of a bill of attainder is strictly a motivational one: inquiring whether the legislative record evinces a legislative intent to punish. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

A statute that suspends a state commission's activities but that does not punish the commission, its members, or any particular commission member, is not a bill of attainder because it does not inflict any punishment, either of the kind normally imposed in criminal cases or any punitive civil sanctions. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

When a state statute is not a bill of attainder and the court otherwise lacks jurisdiction, the plaintiffs' likelihood of success on the merits of their claims is zero. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

– Case or Dispute

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of government. In re Sproat, 2 FSM R. 1, 7 (Pon. 1985).

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Where there is no indication that the sentencing order in question is an attempt to modify or affect the powers of the Director of Public Safety, absent indications that the order prevents the director from doing anything he wishes, the order creates no case or dispute as to the scope of the director's powers, and the court is thus without jurisdiction to speak on the issue. Loch v. FSM, 2 FSM R. 224, 237 (App. 1986).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

A suit against the national government by the states alleging that the states are constitutionally entitled to 50% of all revenues from the EEZ is justiciable because the Supreme Court must reconcile any conflict between sections of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 569 (Pon. 1996).

Our Constitution's "case or dispute" clause, FSM Const. art. XI, § 6, mirrors the U.S. Constitution's "case or controversy" clause. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to cases and disputes and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM v. Louis, 9 FSM R. 474, 481 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The Constitution does not authorize the FSM Supreme Court to declare the law anytime a justice feels moved to do so or authorize the court to respond to every request for a legal ruling directed to it by citizens. Instead, Article XI, section 6 of the Constitution grants jurisdiction, and the power to exercise judicial powers, only in five specific kinds of "disputes" and five types of "cases." FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

A case is not non-justiciable, one not proper for judicial review, when the plaintiff only seeks a fair chance to apply, through a constitutional procedure, for funds for which it is eligible. Udot Municipality v. FSM, 9 FSM R. 560, 563 (Chk. 2000).

The FSM Constitution's case or dispute clause is similar to the U.S. Constitution's case or controversy clause, and it has been determined that no significance could be attached to the difference between the terms "controversies" and "disputes." Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

One of the rationales for limiting a court's power to deciding the cases before it is to prevent the court from intruding into areas committed to the executive or legislative branches. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

Legislative houses are the final judges of their memberships and under the Chuuk Constitution each house is the sole judge of the election and qualification of its members. This does not make an election case about a member-elect non-justiciable until such time as the house has taken its final action. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

It is settled law in the FSM that the FSM Supreme Court has the ability to issue declaratory judgments so long as there is a case or dispute within the meaning of article XI, sections 6(a) or 6(b). Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A court may decide only the case before it, and may not render an advisory opinion. A request for clarification that asks the court to opine on facts not before it, will be denied. Estate of Mori v. Chuuk, 12 FSM R. 24, 26 (Chk. 2003).

In order for a case to be "justiciable," or one over which the court has jurisdiction for purposes of rendering a decision, it must be one that is concrete and definite, and not abstract or hypothetical in nature. A case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

Although the extent and depth of either party's commitment to its view does not resolve the question of whether a justiciable dispute exists, the very divergence of those views highlights the fact that the important issues presented in the case bear in a fundamental way on the relationships between parties who have adverse legal interests. The issues resulting from these differing positions present a justiciable dispute. Urusemal v. Capelle, 12 FSM R. 577, 584-85 (App. 2004).

When a question is hypothetical, academic, or abstract, the court will not rule, and is generally precluded from ruling, on it. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the parties have stipulated to a judgment and one claim remains, in order for the court to exercise its jurisdiction to dispose of this one remaining claim, a case or dispute under Article XI, Section

6 of the FSM Constitution must exist. The case or dispute must exist at the time the court acts. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

While it is within Congress's sole power to determine, by statute, how, and for what, the national government will spend its funds, it is always within the judicial branch's power or jurisdiction to determine, in a proper case, whether those funds were spent in conformity with the statute. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A trial justice may not, *sua sponte*, assert jurisdiction over a case which has been fully dismissed, particularly when that case was dismissed by another justice. When a case has been dismissed, there is no case or dispute remaining before the court. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

The Constitution does not limit the grounds upon which the President can veto bills. The President can veto any bill for any reason he chooses. The Constitution requires the President to return to Congress, within ten days, a bill he has vetoed along with his objections. Congress then makes its own determination of whether those objections will stand by either overriding or sustaining the veto. Invalidation or nullification of a Presidential veto is textually committed by the Constitution to Congress because the power to override a Presidential veto is expressly delegated to Congress. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

The President's reasons for vetoing a bill cannot be questioned in the judicial branch. The court has no jurisdiction to grant the relief of declaring the President's vetoes void regardless of what the President's objections were. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

When the Congress Speaker asks the court, before any enactment process has been completed, to advise the parties on exactly where in the process they stand, the Speaker asks the court for an advisory opinion, which it cannot give. The Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. It does not sit to render advisory opinions. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

It is a basic principle of justiciability that a court will not render an advisory opinion. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

The FSM Supreme Court's jurisdiction is constitutionally limited to actual cases and disputes thereby precluding it from making pronouncements on hypothetical, abstract, or academic issues or when the matter is moot. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

The FSM Supreme Court does not have the jurisdiction or power to render advisory opinions since the Constitution only grants the court jurisdiction to decide actual or concrete cases or disputes. Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010).

The court will not provide a decision in a case that is not currently before it and it will not render advisory opinions. Further, the court cannot opine on facts that are not currently before it. Lee v. FSM, 18 FSM R. 106, 108 (Pon. 2011).

A court will address the part of a motion to dismiss concerning subject-matter jurisdiction first since if the movant were to prevail on this ground any court ruling on the other grounds would be nothing more than advisory opinions, and the court does not have the authority to render advisory opinions. Iwo v. Chuuk, 18 FSM R. 182, 183-84 (Chk. 2012).

When the defendant has filed a summary judgment motion and a motion to dismiss for lack of jurisdiction, the court will consider the motion to dismiss first because if the court were to grant the motion to dismiss, any ruling the court made on the summary judgment motion would, at best, be an advisory opinion since it would have been made without jurisdiction and the FSM Supreme Court does not have the authority to render advisory opinions. Hauk v. Mijares, 18 FSM R. 185, 186-87 (Chk. 2012).

A motion for preliminary approval of a settlement must be denied when the class plaintiffs seek approval of a compromise of a hypothetical cause of action that they have not pled against a party that is neither a defendant nor a cross-defendant. Because there is no case or dispute for the settlement agreement to settle, the settlement agreement cannot be approved since there is no real settlement to approve or reject and since the court cannot make hypothetical rulings. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 231 (Yap 2013).

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

Even when the court generally has jurisdiction over a case's subject matter, that case still must be justiciable in order for the court to be able to grant any relief. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

– Case or Dispute – Mootness

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

A claim becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Berman v. FSM Supreme Court (II), 7 FSM R. 11, 16 (App. 1995).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

The FSM Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the FSM Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

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

An exception to the mootness doctrine exists when there is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM v. Louis, 9 FSM R. 474, 483 (App. 2000).

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

When it appears that the problem will arise again, and would otherwise be incapable of review, the court has jurisdiction because the most notable exception to the mootness doctrine is a situation in which

an otherwise moot case may have a continuing effect on future events, including future litigation. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119 (Pon. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

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

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM R. 601, 611 (Chk. S. Ct. App. 2002).

The FSM Constitution's "case or dispute" clause restricts the FSM Supreme Court's jurisdiction to cases and disputes, and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409-10 (App. 2003).

The Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 (App. 2003).

There may be exceptions to the mootness doctrine, *e.g.*, for situations in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 410 n.5 (App. 2003).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

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

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. The court is thereby precluded from making pronouncements on the basis of hypothetical, abstract, or academic issues or when the matter is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

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

When any relief that a court would grant would be ineffective, then the court must deem the dispute moot. The mootness doctrine precludes a court from addressing a dispute's merits when the court can no longer grant any relief which would have any practical effect. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

When the submission of a letter constitutes compliance with the court order to file a brief, the petitioners' central claim that it cannot be compelled to submit a brief is rendered moot, and in the usual case, this would preclude the consideration of any of the petition's issues because the FSM Supreme Court lacks jurisdiction over, and cannot decide, moot cases since the Constitution requires that there be a case or a dispute. But an exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation, and when it appears that the problem will arise again, and would otherwise be incapable of review, a court may still have jurisdiction under this exception. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

A claim is moot when the parties lack a legally cognizable interest in the outcome. A case must be one appropriate for judicial determination, as distinguished from an hypothetical or abstract dispute. The controversy must be definite and concrete, touching the legal relations of parties having adverse interests. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM R. 595, 596 (App. 2003).

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

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

When the appellants have not in fact been required to perform any non-statutory accounting and another appellant has already submitted an accounting, the appellants' challenge of a trial court order that others complete a proper accounting is moot. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

A dispute becomes moot when the parties lack a legally cognizable interest in the outcome and if any relief it could grant would be ineffectual. FSM v. Udot Municipality, 12 FSM R. 29, 42 (App. 2003).

When even if the issue of mootness had been raised, the case still fell within the exception to the mootness doctrine that it may have a continuing effect on future events, including future litigation and may

be capable of repetition, yet evading review, the court will address the issue. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

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

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

A criminal defendant's claim that if he is not granted a stay of his sentence of imprisonment pending appeal his appeal will become moot can only be deemed frivolous or for the purpose of delay since even if a criminal appellant has finished his sentence before his appeal is decided, that will not render his appeal moot because of a criminal conviction's collateral consequences, such as the legal disabilities that ensue. FSM v. Petewon, 14 FSM R. 463, 469 (Chk. 2006).

A case becomes moot when the party raising an issue lacks a legally cognizable interest in the outcome of the issue, and if the relief sought would, if granted, be ineffectual. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

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

When the appellant has been released from jail on parole, any relief that the appellate court could grant the appellant on his request for release pending the outcome of his appeal, would be entirely ineffectual. As such, the appellant's request for release pending appeal is moot and will be denied as moot. Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App. 2007).

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

When the opinion and the writ of prohibition issued in a different appeal has already granted the appellants all of the relief that they first sought in this case, this appeal has become moot because any relief the court could now grant would be ineffectual, and a motion to dismiss will therefore be granted. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Nikichiw v. Marsolo, 15 FSM R. 177, 179 (Chk. S. Ct. App. 2007).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case becomes moot when the party raising the issue lacks a legally cognizable interest in the issue's outcome, and if the relief sought would, if granted, be ineffectual. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

When the issues raised in an application for a writ of habeas corpus are moot because the applicants have already been granted the relief sought – release from jail – any consideration or relief would thus be ineffectual. No justiciable case or dispute is presented when events subsequent to a case's filing make the issues presented moot. Since the FSM Supreme Court lacks jurisdiction to consider moot cases or issues, it must dismiss a moot application because, when the court lacks jurisdiction over a case, it should not remain lifelessly on the docket however harmless that may seem. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

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

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635 (Chk. S. Ct. Tr. 2013).

A case would fall within the exception to the mootness doctrine when it may have a continuing effect on future events, including future litigation, and may be capable of repetition yet evading review. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 635-36 (Chk. S. Ct. Tr. 2013).

A motion to dismiss for mootness will be denied when the court record demonstrates that the action in question has occurred in the past, and but for the injunction, would have occurred in this instance absent the issue being considered, the action in question will likely occur in the future, thereby effectively evading review save for the application of the doctrine of "capable of repetition, yet evading review." Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 634, 636 (Chk. S. Ct. Tr. 2013).

A motion is not "moot" when the parties still have a legally cognizable interest in the case's outcome because a case or dispute becomes moot only when the parties lack a legally cognizable interest in the outcome. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

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

A claim becomes moot when the parties lack a legally cognizable interest in the litigation's outcome. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

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

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

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

An appeal will be dismissed if events after its filing make the issues presented moot because the court lacks jurisdiction to consider moot cases. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

A moot case does not present a justiciable dispute. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

An appellate court may receive proof of, or take notice of, facts outside the record to determine if an appeal has become moot. In most cases, it would be difficult to determine mootness any other way. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

Among the circumstances that create mootness are rulings in other adjudicatory proceedings, including rulings by the same court in the same or companion proceedings. Generally, an intervening judicial decision entered in a collateral proceeding will render moot a case or an issue arising therein when the decision resolved the controversy or the issue. Setik v. Perman, 22 FSM R. 105, 118 (App. 2018).

All the appellants' substantive claims are moot and will be dismissed when those claims no longer present a justiciable dispute because previous appellate decisions have resolved them in their entirety. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Although the usual result when an appeal becomes moot is for the appellate court to vacate the judgment below and order that the case be dismissed, when the case below has already been dismissed, no purpose would be served by vacating that dismissal and then dismissing it again. Setik v. Perman, 22 FSM R. 105, 120 (App. 2018).

Article XI, § 6 of the Constitution restricts the court's jurisdiction to only actual "cases" or "disputes." A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Timsina v. FSM, 22 FSM R. 383, 386-87 (Pon. 2019).

The court is precluded from making policy pronouncements on the basis of hypothetical or academic issues. If the court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

A well-established exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation. Timsina v. FSM, 22 FSM R. 383, 387 (Pon. 2019).

Although the appellant contends that if its helicopter is sent to Guam, its appeal is in danger of becoming moot, mootness is not even a consideration for all of the issues turning on U.S. federal law because those issues, if raised, will then be properly before the court where they should be determined, and, if there are any remaining issues restricted solely to FSM law, the appellant, if it chooses, can rely on the capable-of-repetition-yet-evading-review doctrine to avoid a dismissal based on mootness. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

– Case or Dispute – Political Question

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

Placement of proposed constitutional amendments on the ballot does not transform a claim into a non-justiciable political question. It does not constitute a commitment of the issue to any of the branches of government. Chuuk v. Secretary of Finance, 9 FSM R. 73, 74-75 (Pon. 1999).

When there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16-17 (App. 2006).

When there is no textually demonstrable constitutional commitment that declaring a trochus harvest is reserved solely to one branch of government without the involvement of any other branch or that the power to engage in commercial activity is reserved solely to one branch of government, the political question doctrine does not apply. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

An argument that the political question doctrine bars the court from becoming involved in a case because a state law gives a state regulatory body the power followed to its logical conclusion would mean that no court could ever rule an executive action illegal because some law empowers the executive to make that decision. In other words, the principle of judicial review, enshrined in both the FSM and Pohnpei Constitutions, would be overthrown and the government's actions could never be questioned or reviewed in any court. That cannot be so. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

When there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government (such as Congress being the sole judge of the elections of its members) it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

A President's reason for vetoing the bills passed during the Fourteenth Congress's Second Special Session is a non-justiciable issue because when the Constitution has a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically

contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

The legal principles of justiciability, separation of powers, the political question doctrine do not apply to a case that, at its core, is one in which each party alleges the other breached a contract, and in which the defendant also counterclaims for civil rights violation, abuse of process, civil conspiracy, intentional interference with contractual relations, libel, and slander. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the Constitution's requirements for the separation of powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 (Pon. 2010).

Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Among the formulations describing a political question is a case where there is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Chuuk v. FSM, 20 FSM R. 373, 375-76 (Chk. 2016).

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first 50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

The matter does not present a nonjusticiable political question when it is not apparent why the constitutional mandate that 50% of national tax revenues be paid into the treasury of the state where collected would not be self-executing (except if Congress wants a higher percentage remitted to the states). Chuuk v. FSM, 20 FSM R. 373, 376 (Chk. 2016).

When the Constitution contains a textually demonstrable commitment of an issue to a coordinate branch of government, it is a non-justiciable political question not to be decided by a court because of the constitutionally mandated separation of powers. This is as true of the Pohnpei Constitution as it is of the FSM Constitution. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Constitution clearly and demonstrably textually commits the investigation of, and the impeachment of Pohnpei state government officials, including the Pohnpei Chief Justice, to the Pohnpei Legislature. An impeachment proceeding's procedure, including its timing, is thus also a non-justiciable political question. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

The Pohnpei Legislature's procedures for, including the timing of, its investigation and possible impeachment of the Pohnpei Chief Justice, are non-justiciable. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 280 (Pon. 2017).

A preliminary injunction seeking to enjoin the possible impeachment of the Pohnpei Chief Justice, will be denied when there is no possibility of success on the merits because the case involves a non-justiciable political question, and the equities all favor the Pohnpei Legislature, and the public interest will be served by permitting the Legislature's investigation of a possible impeachment to proceed. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 281 (Pon. 2017).

Whether Congress should discipline, or should have disciplined, a member is nonjusticiable – it is a political question that is beyond the court's power or authority. This is because when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of powers provided for in the Constitution, and the question of disciplining Congress members is textually and demonstrably committed to a coordinate branch of government – Congress itself. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

The decision whether to discipline a member is a nonjusticiable political question left to Congress's discretion. Panuelo v. FSM, 22 FSM R. 498, 511 (Pon. 2020).

– Case or Dispute – Ripeness

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM R. 416, 418-19 (Pon. 1988).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

When the plaintiff argues it is exempt from the tax under state and national law as an entity wholly owned and operated by the national government functioning solely for public benefit and the state asserts

that the plaintiff's corporate status exposes it to state taxation (regardless of the national government's stock ownership and indirect control) and claims that the FSM Constitution does not authorize the national government to prevent the imposition of a "use tax" on imported goods used or consumed in the state, and when the state requests a declaration that its use tax scheme does not violate the FSM Constitution and makes its motion aware that the court's resolution of the plaintiff's motion does not require it to address whether the use tax law conflicts with the FSM Constitution even though the plaintiff's complaint includes a cause of action raising that very argument, all of the issues addressed in the motions are properly raised by the pleadings and involve justiciable controversies of special public concern worthy of resolution at this time. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 293-94 (Pon. 1999).

An objection based on lack of ripeness in a case concerning appropriated funds that have not yet been distributed cannot prevail when the manner of the funds' distribution appears (at this stage of the proceedings) to violate the Constitution. Udot Municipality v. FSM, 9 FSM R. 560, 562-63 (Chk. 2000).

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

When the plaintiff's claims all derive from the common allegation that its facility will be taken from it at the end of the parties' lease, when the parties have signed a lease agreement that purports to confer ownership of the facility on the defendant at a specified time, and when the parties have a good faith dispute as to the validity of this result under the National Constitution, this renders the case ripe for adjudication. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 229 (Pon. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

A matter must also be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When any attorney's fee forfeiture (which is the plaintiff's allegedly threatened injury) could not possibly occur until after trial and conviction of his clients in another case, and, since only if that occurs, the government might (but not even then, certainly) seek forfeiture of any fee earned by the plaintiff, the alleged injury is, at this time, too speculative and remote for this case to be ripe for adjudication. It is thus not a concrete controversy capable of adjudication now since none of the four counts, to the extent that they seek redress for or protection of the plaintiff's allegedly threatened fees, are ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and

the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

Ripeness is also a threshold justiciability issue. For the FSM Supreme Court to exercise its jurisdiction, the issue raised must be ripe for adjudication. A matter is ripe when there is an actual, present controversy not merely a hypothetical or speculative conflict. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

When the plaintiffs allege a possible, theoretical injury, but have asserted no real injury to them and when they have also not alleged a threatened injury, they have not alleged any actual harm to them under the aforementioned circumstances, and therefore as to this contention, the matter is not ripe for adjudication. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A party cannot sue until its cause of action has accrued. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

For the FSM Supreme Court to exercise its jurisdiction, the issue raised must be ripe for adjudication. Ripeness is a threshold issue. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 10 (Pon. 2018).

A matter is ripe when there is an actual, present dispute not merely a hypothetical or speculative conflict. A matter must be ripe for adjudication for there to be a case or dispute over which the court can exercise jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 10 (Pon. 2018).

When, to whatever extent the plaintiff's claim is based on any defendant's alleged failure to comply with Pohnpei Supreme Court orders, the claim is not ripe for adjudication because the Pohnpei Supreme Court has not yet ruled whether the defendant was within its rights to take the action it did. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

– Case or Dispute – Standing

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98-99 (Pon. 1985).

In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of the Constitution and calculated to meet the needs of the people and institutions within the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where dive shop operators allege actual or threatened economic injury as a result of increased competition flowing from business activities of a pleasure cruise ship providing diving opportunities in the same geographical area where the plaintiffs operate, and where they have placed before the court information sufficient to establish the reasonableness of their fear of economic injury, their law suit challenging the legality of the issuance of a foreign investment permit to a cruise ship may not be dismissed for lack of standing. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 100 (Pon. 1985).

Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a national senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," article IX, section 13 of the FSM Constitution. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 101 (Pon. 1985).

There is in the FSM no separate requirement that there be a nexus, that is, a logical connection between persons threatened by injury from the actions of an administrative agency and the statutory provisions under which the agency is operating. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 102 (Pon. 1985).

The issue of standing to sue, because it was a particularly unsettled area in United States law when the FSM Constitution was drafted and ratified, is an area especially calling for independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Innocenti v. Wainit, 2 FSM R. 173, 178-79 (App. 1986).

The standing requirement is not expressly stated in the Constitution but implied as an antecedent to the constitutional case or dispute requirement, and should be interpreted so as to implement the objectives of that requirement. Innocenti v. Wainit, 2 FSM R. 173, 179 (App. 1986).

Business people have standing to challenge the constitutionality of an excise tax based on imports where the addition of the tax increases the cost that business people must pay for goods intended for resale to consumers. Innocenti v. Wainit, 2 FSM R. 173, 180 (App. 1986).

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM R. 508, 511 (Kos. S. Ct. Tr. 1988).

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 334 (Kos. S. Ct. Tr. 1990).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. In re Parcel No. 046-A-01, 6 FSM R. 149, 153 (Pon. 1993).

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 154 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state government has certified ownership of land, and the traditional leaders' suit to have that land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM R. 149, 157 (Pon. 1993).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

The FSM will not apply a Trust Territory rule based on Trust Territory Code provisions that only the government had standing to challenge title to land to deny standing to private persons challenging title to land under entirely separate FSM Constitutional provisions on citizenship, especially since the authority for the Trust Territory rule was derived from now-deleted language in an American legal encyclopedia. Etscheit v. Adams, 6 FSM R. 365, 383-84 (Pon. 1994).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

A surviving co-obligor has standing to sue for failure to obtain credit life insurance for a deceased co-obligor. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

The states have standing to sue the national government where the states claim they are entitled to 50% of all revenues from the EEZ because it is an otherwise justiciable controversy in which they have a sufficient stake or interest. Chuuk v. Secretary of Finance, 7 FSM R. 563, 570 (Pon. 1996).

While it may be that in the usual case a judgment debtor would not have standing to contest or appeal the distribution of funds collected pursuant to the judgment, but where the result of the case will have a substantial financial impact on the judgment debtor, he is an aggrieved party with standing to

appeal because standing exists where a party has a direct pecuniary interest in the outcome of the litigation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

While it is generally true that parties may not assert the rights of third parties or non-parties, where the plaintiff ship charterers would be subject to the obligations and liabilities of an employer, such as withholding taxes, and that failure to perform those obligations would expose the plaintiffs to civil and criminal penalties if the crew is subject to FSM wage and salary taxes, the plaintiffs are attempting to assert only their own rights and have standing. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

When, at the formal hearings, a person testified that her father had willed the parcel at issue to her brother and she did not submit any testimony in support of her own personal claim even though she was given an opportunity at the end of her testimony to give a statement about any "last word will" made by her father, neither she, nor her daughter, now claiming under her, had a right to notice of the parcel's Determination of Ownership because she was not an interested party, and her daughter cannot now claim to be an interested party. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

A municipality that is one of eight eligible to receive development funds has standing to raise whether it has been fairly allowed to apply for some of them. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

Because the court must have a case or dispute before it in order to exercise jurisdiction, if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

A contention that a plaintiff is not singled out and thus suffers no irreparable harm peculiar to itself because it is one of eight in the same boat, does not indicate a lack of standing on the plaintiff's part, but rather that any of the eight would also have had standing to sue if it so chose. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will

arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM R. 354, 358 (Chk. 2001).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158-59 (Chk. 2002).

An *afokur* has no right to sue for himself over lineage land and will be dismissed from such a lawsuit as a party in his individual capacity, because even if the lineage should prevail in the suit, the court could not award the *afokur* anything since whatever he might personally receive would be contingent on the lineage granting him permission to share in its recovery. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM R. 333, 336 (Pon. 2003).

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

The standing issue is addressed first as it is a threshold issue going to a court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

The standing requirement is not expressly stated in the FSM Constitution, but is implied as an antecedent to the Article XI, Section 6 "case or dispute" requirement and should be interpreted so as to implement that requirement's objectives. The issue of standing to sue is an area which calls for the FSM Supreme Court's independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. While not constitutionally based, three additional factors or prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The first standing factor to be addressed is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether it has suffered some threatened or actual injury resulting from the defendant's allegedly illegal action. The injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The second standing factor is that there must be a causal connection between the injury and the conduct complained of. The injury must be fairly traceable to the defendant's challenged action and not the result of the independent action of some third party not before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497 (Kos. 2003).

The Kosrae Legislature's alleged injury of not having its policy decisions abided by or infringed upon, cannot be fairly traced to the Development Bank's challenged actions under the Investment Development Act because while the bank has the responsibility to evaluate and comment upon a project's commercial feasibility and public infrastructure need, the FDA, not the bank has the loan's final approval. Therefore, the alleged injury cannot be traced to the bank's allegedly faulty or incomplete reports that may or may not have led to the loan's approval when the loan's approval was the result of independent action of the FDA which is not a party before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 497-98 (Kos. 2003).

Another standing factor to be addressed is redressability. Will the relief requested make any legal difference that will redress the petitioner's injury? Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 498 (Kos. 2003).

When the statutory language states only that a state government shall submit a project and when no evidence was offered that the Kosrae Legislature had any formal role in the submittal process, either by way of formal approval or the ability to disapprove a project, the court can find no legally delineated role for the Kosrae Legislature in the submittal process and therefore no injury to it from the governor's submittal. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

Passage of a legislative resolution that submits a request to the Governor which the Governor may or may not carry out at his discretion creates no legally enforceable rights by which the Kosrae Legislature may compel the Governor's compliance, especially when the Governor is not a party to the action. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

A law enacted by the Kosrae Legislature is the highest form of setting forth the legislature's policy decisions and such laws can create legal rights that may be enforceable in the courts. But when the subject bill is not yet law, having been vetoed by the Governor, and the bill requires action by the Governor who is not a party to the action, there is no injury to the plaintiff created from noncompliance with the bill's provisions. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 499 (Kos. 2003).

The three additional factors to be examined for determining standing are: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on third parties' legal rights or interests; and 3) the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to possible harmful ramifications of the proposed disposition of the Kosrae IDF state earmarked subaccount funds, is the type of generalized grievance shared by substantially the whole population, such generalized grievances do not warrant standing. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to the bank's inadequate and incomplete reporting to the FDA go to the FDA's legal rights or interests and not to the Kosrae Legislature's, and when it is purely speculative as to what effect more accurate and complete reports might have had on the FDA's decision making especially since the FDA had "pre-approved" the loan before the report was made, it is likely that the result would not be different. The report is therefore not reviewable and the injury not redressable. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500 (Kos. 2003).

When a complaint does not fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question and neither the statute or constitutional provisions involved provide support for standing, the complaint does not fall within the zone of interest to be protected by the Investment Development Act's provisions which do not provide the plaintiff a cause of action where there was no intent by the FSM Congress to create one. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 500-01 (Kos. 2003).

When the Attorney General could not protect the state's interest since he was personally involved in the matter but when independent legal advice was offered by another attorney in the Attorney General's office who could have been used to protect the state's interest or alternatively, outside counsel could be retained for the same purpose, this does not give the Legislature as a co-equal branch of the state government, standing to sue to protect the state's interest. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Since the Kosrae Legislature is not the intended beneficiary of the Investment Development Act's statutory provisions requiring the bank to make reports to the FDA, its alleged injury is not directly traceable to the bank's reports. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 501 (Kos. 2003).

Issues of standing are discussed first, for a party's standing is a potentially dispositive threshold issue going to the court's subject matter jurisdiction. FSM v. Udot Municipality, 12 FSM R. 29, 39 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

The standing requirement is not expressly stated in the Constitution, but is implied as an antecedent to the "case or dispute" requirement found in Article XI, section 6 of the Constitution, and should be interpreted so as to implement that requirement's objectives. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, section 11 of the Constitution, it first consults and applies sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional case or dispute requirement. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the interests which the party is

seeking to protect must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

When some appellants' interests are sufficiently distinct from those of other appellants and when they have suffered some injury which would be redressible by appeal's resolution in their favor, they have standing to raise issues in the appeal that the other appellants did not raise. FSM v. Udot Municipality, 12 FSM R. 29, 41 (App. 2003).

When some appellants have interests, responsibilities, and functions that are distinguishable from the other appellants because Congress has delegated them authority to create legally enforceable contracts and because they have a significant role in implementing public projects, and when they have been injured in the performance of their duties by the trial court's order and their alleged injury can be traced to the challenged action and is not a generalized grievance shared by substantially the whole population, those appellants have competing contentions and are adversaries with sufficient interest in the outcome to have standing to challenge the trial court rulings on appeal. FSM v. Udot Municipality, 12 FSM R. 29, 42-44 (App. 2003).

A party has standing to challenge both the legality of the process and compliance with the Financial Management Act and related regulations to the extent that such compliance impacts upon the relief that it requests when it has more than a general interest in the legality of this process as it contends that, under a fair and transparent application process, it would receive at least the opportunity to apply for and receive some of the funds for its own projects. Thus, the trial court in finding standing properly recognized and focused on the party's threatened economic injury when the process by which the Faichuk appropriations were being administered was alleged to be unlawful. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

Although the Financial Management Act does not create a private right of action for parties in general to contest violations of its provisions, a party has standing when it requests the opportunity to seek funding from the challenged public laws without participating in an unlawful process and the FSM's failure to comply with the Act and its related regulations impacts upon the relief that it requests and when, in order for it to seek funding, determination of what portion of funds remained unobligated and might still be available was necessary and an accounting was a necessary and appropriate tool to achieve this. FSM v. Udot Municipality, 12 FSM R. 29, 45 (App. 2003).

A municipality may have standing when it has demonstrated a threatened economic injury and a sufficient stake in the controversy's outcome and this threatened economic injury is a direct result of, and can be traced to, the illegality of the subject provision in the appropriation and the manner in which it was being implemented, when the injury would be redressed by a favorable decision, when the injury is not a generalized injury shared by substantially the whole population, but it is asserting its own legal rights and interests, and is not resting its claim to relief on the legal rights or interests of third parties, and when its complaint falls within the zone of interest to be protected by the statutory and constitutional provisions in question. FSM v. Udot Municipality, 12 FSM R. 29, 46 (App. 2003).

When a plaintiff obtained an assignment that was registered and subsequently dissolved by the Public Lands Board, the plaintiff was directly and adversely affected by the Board's decision, and thus has standing to sue the Board. There can be no question that the plaintiff is the real party in interest. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

The two concepts of standing and justiciability interrelate, since standing is a prerequisite to a justiciable "case or dispute" under Article XI, Section 6(a) and (b) of the Constitution. There can be no case or dispute if a party lacks standing to bring suit in the first place. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

While the requirement of standing is not set forth in so many words in the Constitution, it is implicit in the "case or dispute" requirement found in Article XI, Section 6 of the Constitution. A party has standing sufficient to allow him to sue when that party has a sufficient stake or interest in an otherwise justiciable case or dispute to obtain judicial resolution of the controversy. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

Since the President, as the country's Chief Executive and by virtue of that office the chief law enforcement officer, has a stake or interest in insuring that disruption of the judicial process does not occur from the delay in the administration of justice resulting from a specially assigned justice's disapproval, when he has suffered actual injury resulting from an allegedly illegal action, which can be traced to the challenged action and can be redressed by a court decision (that is to say by a judicial determination that both the resolution and the statute on which it is based are unconstitutional), he thus has a sufficient stake in the controversy's outcome to have standing. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

When the President is contesting, not the manner in which the special justice was assigned, but the manner in which he was removed, the delay resulting from a specially assigned justice's removal pursuant to 4 F.S.M.C. 104(2) is a real injury sufficient to bestow standing on the President to contest the constitutionality of that statute. Urusemal v. Capelle, 12 FSM R. 577, 584 (App. 2004).

A party has standing to sue where that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

The plaintiffs have a sufficient stake or interest to maintain a case when they allege that they were not paid a portion of the funds they were specifically entitled to under the terms of the agreement to sell land to the defendant, but that someone else wrongfully received those funds and when they claim as damages only those funds that they are entitled to, but were not paid. The court is thus in a position to resolve the matter by awarding appropriate damages. Edgar v. Truk Trading Corp., 13 FSM R. 112, 115 (Chk. 2005).

Standing is a threshold issue going to this court's subject matter jurisdiction and thus is addressed first. Standing must be found for each count of a complaint or that count will be dismissed. Ripeness is also a threshold issue. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

Although standing is not an expressly-stated requirement of the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in the Constitution's jurisdictional grant to the court, and must be interpreted so as to implement that requirement's objectives. That is, there must be a case or dispute in order for the FSM Supreme Court to have jurisdiction over the subject matter. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005).

The issue of standing to sue is an area which calls for this court's independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

For there to be standing, opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Two factors are central to the determination of whether a party has standing. First, he must allege a sufficient stake in the controversy's outcome and he must have suffered some threatened or actual injury resulting from the allegedly illegal action, and, second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

While not constitutionally based, three additional, prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the plaintiff generally must assert his own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the plaintiff's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

The first factor to be addressed in a standing inquiry is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether he has suffered some threatened or actual injury resulting from defendants' allegedly illegal action. The injury must be an invasion of some legally

protected interest which is concrete and particularized, and actual, or imminent. Sipos v. Crabtree, 13 FSM R. 355, 363 (Pon. 2005).

To have standing, a plaintiff must suffer some threatened or actual injury resulting from defendant's allegedly illegal action and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, but when the plaintiff's assertion of injury that runs to all counts of his complaint is that his threatened injury of attorney fee forfeiture is too speculative, it does not pass the first factor of the standing test. Sipos v. Crabtree, 13 FSM R. 355, 363-64 (Pon. 2005).

When no fee forfeiture proceeding has been instituted against the plaintiff and the government has stated that it has no intention of seeking pre-conviction attachment or seizure of attorney fees and would consider seeking forfeiture only if the criminal defendants are convicted; when in spite of the plaintiff's assertion of a chilling effect on representation of those defendants, he entered an appearance on their behalf; when that case has yet to go to trial and no one has been convicted; and when no determination has been made of the status of any of the funds that might be subject to forfeiture, there is yet no injury or likelihood of any injury to the plaintiff and the dispute is purely of a hypothetical or abstract character. To be a threatened injury which is actual or imminent, the court would have to presume that the plaintiff's clients are guilty, before that has been proven, or that they will be convicted, before a verdict has been rendered. Since that case may end with the plaintiff's clients' acquittal or dismissal, the threatened injury may remain forever hypothetical, is thus neither actual nor imminent. Sipos v. Crabtree, 13 FSM R. 355, 364-65 (Pon. 2005).

The second factor in a standing inquiry is that the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Part of this standing factor is redressability – will the relief requested make any legal difference that will redress the plaintiff's injury? Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

A party cannot raise the claims of third persons; he may raise only his own claims. He generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

Since the alleged wrongful interference with the plaintiff's ability to represent his clients is an alleged violation of his clients' rights, not of his rights, those rights are for his clients to assert. Thus to the extent that a cause of action is based on the violation of the rights of others, the plaintiff lacks standing to bring it because it is not redressible – he cannot seek redress for these allegations. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When a request for relief is a declaration of when an attorney may accept a fee without the fee being subject to forfeiture at a later time by a confiscation order, it asks for an advisory opinion. The court has no jurisdiction to give advisory opinions, because to do so would violate the Constitution's case or dispute requirement. An advisory opinion is thus not a form of redress available to a plaintiff. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the plaintiff seeks as relief an order unsealing another case, even if it were his own rights he was asserting and not those of other non-parties, he would have to seek that relief in the court handling that case or a criminal case that arose from it, not in this case since that proposed relief does not redress the threatened injury – loss of attorney's fees – in this case. Sipos v. Crabtree, 13 FSM R. 355, 365 (Pon. 2005).

When the complaint either asserts the rights of others not a party to the case or seeks relief not available here or seeks redress for or protection of the plaintiff's allegedly threatened attorney's fees and the fee claim is not ripe for adjudication, the entire complaint will be dismissed for lack of standing and ripeness. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

It is generally true that a litigant cannot assert someone else's rights, but this does not apply when it is not a matter of asserting another's rights but of maintaining the integrity of the judicial process. McVey v. Etscheit, 14 FSM R. 207, 214 (Pon. 2006).

When the claim against the FSM asserts that the FSM published false and misleading information about certain crewmen and the vessel's captain is the only crew member who is a party to the action, the court must assume that this is his personal claim since a party must assert his own legal rights and interests, and cannot rest his claim to relief on third parties' legal rights or interests. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing is interpreted so as to implement the objectives of the constitutional case or dispute requirement. Standing exists when a party has a direct pecuniary interest in the litigation's outcome. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

When the plaintiffs "own" the natural resources through the *tabinaw*, the plaintiffs' exclusive rights to use and exploit the marine resources of the area affected by a grounding and subsequent oil spill give them standing to maintain a class action with respect to the issues at trial – damages to the marine resources from the grounding and oil spill. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A party has standing to challenge a certificate of title when, although he admits that some of the land was sold to others, he asserts that even after those sales, he still retained part of the land. Dereas v. Eas, 14 FSM R. 446, 453-54 (Chk. S. Ct. Tr. 2006).

Generally, a party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the amended complaint names as plaintiffs Timakio Ehsa, PMS, and "all foreign fishing vessels (dba) FSM Access Agreement," and when PMS, whose financial viability depends on the services

it provides the commercial vessels and the fees it collects from those vessels, has more than an incidental interest in the action's outcome, the court will decline to dismiss the complaint on the basis of lack of standing. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 484 (Pon. 2006).

When the debt the defendant owes the plaintiff was assigned by the plaintiff to its credit insurer and thereafter the insurer paid $48,554.11 to the plaintiff pursuant to its insurance arrangement and then made attempts to collect the outstanding debt from the defendant but its collection efforts were unsuccessful and when the plaintiff then procured a reassignment of the debt from its insurer and agreed to reimburse the insurer first and in full from any recovery, net of reasonable attorney's fees incurred in the plaintiff's recovery attempts, the plaintiff, as a result of the reassignment, is the proper party in interest and has standing to bring the action to recover the debt from the defendant. American Trading Int'l, Inc. v. Helgenberger, 15 FSM R. 50, 51-52 (Pon. 2007).

A party cannot raise the claims of third persons. She may raise only her claims. She must assert her own legal rights and interests, and cannot rest her claim to relief on the legal rights or interests of a third party. Ruben v. Hartman, 15 FSM R. 100, 114 (Chk. S. Ct. App. 2007).

An insurance policy beneficiary has standing to sue for unpaid insurance policy benefits. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

Whether a party has standing to sue is a question of law reviewed de novo on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008).

The issue of standing is a threshold issue going to a court's subject matter jurisdiction and therefore standing is properly challenged in the form of a motion to dismiss brought under Rule 12(b)(1) because when a plaintiff does not have standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

To the extent that the prisoners are asserting that Chuuk has a right to be paid money by the national government because of their incarceration in Chuuk state jail, the prisoners are asserting, not their own rights, but the State of Chuuk's rights, which they cannot do because they lack standing to raise a non-party's rights. FSM v. Sias, 16 FSM R. 661, 664 (Chk. 2009).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

If the requirement of standing is given a narrow construction when there is involved constitutional or important statutory rights then there is, in effect, no practical remedy for anyone with an interest in

enforcing the right – and the right becomes a mockery. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in the dispute's outcome and it must have suffered some actual or threatened injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind a favorable decision will likely redress. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

Whether Pohnpei had reasonable suspicion to stop someone or probable cause to arrest him is not an issue his wife has standing to raise. A party cannot rest her claim for relief on the rights of third persons since she lacks standing to raise a non-party's claims and rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

A party lacks standing to make any contention about an unequal application of state policy for completing accident reports when it is her husband's claim, and not hers, since that "policy" was not applied to her (she had not been in an "accident") but to her husband. Only he could raise a claim arising from an unequal application of accident report obligations. She lacks standing. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Although generally only a client or a former client has standing to move to disqualify counsel in a civil case on the basis of a conflict of interest, even then a non-client may seek disqualification when the ethical breach so infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of her claims since she may have the constitutional standing needed to bring a motion to disqualify based on a third-party conflict of interest. Marsolo v. Esa, 17 FSM R. 480, 484-85 (Chk. 2011).

Opposing counsel may have standing to seek counsel's disqualification even though they are not representing an aggrieved client or former client because bar members have an ethical obligation and are authorized to report any ethical violations in a case. Marsolo v. Esa, 17 FSM R. 480, 485 (Chk. 2011).

A trustee, guardian, or custodian of funds has standing to sue to obtain control of or to prevent the loss of funds that it should be holding in trust, guarding, or having custody of, so it could discharge its legal duties and responsibilities toward the party for whose benefit it was holding those funds. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

It is doubtful whether a movant, who is a defendant only in the second cause of action, has standing to move to dismiss the third or the first cause of action. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

When the complaint alleges that a person is bound by the mortgage because another defendant, who signed the mortgage, held that person's power of attorney to act on his behalf in regard to the land, the plaintiff is estopped from and cannot deny that that person is a party to the mortgage and, since he is a party to the mortgage, he has standing to enforce its provisions. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

Standing and justiciability are threshold issues going to the FSM Supreme Court's subject matter jurisdiction and thus are addressed first. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

Standing must be found for each count of a complaint or that count will be dismissed. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

A vessel owner's right to seek a limitation of its liability is created by an FSM statute, and as the vessel's owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel's grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

A plaintiff has a personal stake in the litigation's outcome when the Plan's insurance premiums are taken from his senatorial salary and when, since he is one of the two co-equal heads of the Chuuk Legislature, it appears that he has standing in his representative capacity. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

State employees suing for unpaid compensation for work they performed, obviously have a sufficient stake in the case's outcome when they allege that they each have suffered an actual injury (insufficient pay) and that that injury can be traced to the Director's challenged action and their claim is one that a favorable court decision can redress by awarding damages. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the State Tax Act provides that no person shall have a right of action to challenge the validity of any tax levied by the Act unless that person first pays to the state the tax in question, under protest, and when the state has seized by tax levy $2,931.29, and the state rightly considers that seizure to be a partial payment under protest, the court, without having to analyze it further, unquestionably has jurisdiction over a challenge to the cigarette tax because a cigarette tax payment was made under protest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 152 (Chk. 2013).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

An intervention, whether as of right or permissive, hinges upon whether the court can properly recognize the would-be intervenor's alleged interest in the subject cause of action. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

To intervene to prosecute a third-party beneficiary claim when the movant lacks privity of contract and there is no existing statutory provision that the movant might be able to avail itself, the movant must make a showing that it has actually suffered a loss or injury, which would be capable of being redressed through its proposed intervention, and which is separate from the rights and claims asserted by the existing parties. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

Standing exists when a party has a direct pecuniary interest in the litigation's outcome. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 218 (Pon. 2015).

In order to intervene under Rule 24, an applicant must have an interest which is of such a direct and immediate character, that the proposed intervenor will either gain or lose by the immediate operative effect of that judgment, but when the would-be intervenor has no direct pecuniary interest in the litigation's outcome, it lacks the requisite standing to intervene as an interested party. Pacific Int'l, Inc. v. FSM, 20 FSM R. 214, 219 (Pon. 2015).

Although the standing requirement is not expressly delineated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted, so as to implement that requirement's objectives. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Whether a party has standing is a question of law reviewed *de novo* on appeal. Since standing cannot be waived, an appellate court is obliged to conduct an independent inquiry, with respect to the parties' standing to challenge national laws, even though the parties have not raised, and the trial court not ruled on, the standing issue. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

Two factors are central to the determination of whether a party has standing. Initially, a party must allege a sufficient stake in the controversy's outcome and must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Next, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party must generally assert its own legal rights and interests and cannot rest its claim to relief on the legal rights and interests of third parties. Third, the interests which the party is seeking to protect, must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511-12 (App. 2016).

Generalized grievances shared by the public at large, do not confer standing on specific individuals. An interest in having the government conform to the limitations imposed by the Constitution, without more, is clearly a shared interest and therefore, the government's alleged failure represents a generalized grievance. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 512-13 (App. 2016).

In any matter before the court, the issue of standing should be addressed first as it is a threshold issue going to the court's subject matter jurisdiction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

Although not expressly stated in the FSM Constitution, the "case or dispute" requirement in Article XI, Section 6 of the FSM Constitution is interpreted to imply the requirement that a party has standing to bring a suit. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Thus, the opposing parties must have sufficiently competing contentions and adverse interests such that the adversaries will thoroughly consider, research, and argue the points of law at issue, and the controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639-40 (Pon. 2016).

The two central factors for determining whether a party has standing are: 1) the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Three additional prudential principles also need to be considered: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) even when an injury is sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties; and 3) the petitioner's complaint must fall within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

Because it is the plaintiffs who invoke the court's jurisdiction, it is the plaintiffs' burden to prove that standing exists. Therefore, when the defendants challenge standing in a motion to dismiss or as an affirmative defense, the plaintiffs' complaint must contain facts that, if true, would be sufficient to establish that standing exists. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Based on this, the court will continue applying the prudential standing principles in determining whether a particular plaintiff has standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 n.3 (Pon. 2016).

For there to be standing, the plaintiff must have suffered some threatened or actual injury resulting from the defendants' allegedly illegal action, and the injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

For there to be standing, the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The first prong of the test for standing is satisfied when the customary right to receive oferings from their constituents and subjects is shared among each member of the Mwoalen Wahu, is protected by the Pohnpei Constitution, and is imminently threatened by the defendants' allegedly illegal conduct because it has been shown that sea cucumber declines pose an intensified threat to Pohnpei's nearshore coral-reef ecosystem and thus all marine life within that ecosystem, thereby posing an increased threat to the Mwoalen Wahu members' rights to receive offerings from marine life that inhabit that ecosystem. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 644 (Pon. 2016).

The plaintiffs' reasonable fears of environmental pollution is sufficient injury-in-fact to support standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

For there to be standing, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

When, without a sea cucumber harvest, the Mwoalen Wahu will remain in the same posture as in the past and its members will continue to receive offerings by their constituents and subjects whereas a sea cucumber harvest threatens to reduce the structure and habitat of Pohnpei's reefs and negatively impact marine life, including marine life that Mwoalen Wahu members have a customary right to receive from their people, the threatened injury is directly traced to the challenged action and would be redressed by a decision in the plaintiffs' favor. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Standing's prudential principles do not necessarily go to the core of the court's jurisdiction based on the "case or dispute" constitutional principle, but rather reflect an effort by the court to determine whether it should exercise judicial self-restraint when it seems wise not to entertain a case. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.5 (Pon. 2016).

Generalized grievances shared by substantially the whole population do not normally warrant standing and the petitioner generally must assert its own legal rights and interests, and cannot rest its claim on the legal rights or interests of third parties, but organizational standing to sue based on the rights of its members is proper. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

For there to be standing, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

When the customary right the Mwoalen Wahu seek to protect is clearly within the zone of interests sought to be protected under Article 5 of the Pohnpei Constitution which upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei and when sea cucumber commercialization is regulated by Pohnpei statute, the plaintiffs' complaint has fallen within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

If the requirement of standing is given a narrow construction when constitutional rights are involved, then there is, in effect, no practical remedy for anyone with an interest in enforcing the right – and the right becomes a mockery. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

The plaintiffs have standing to bring the matter before the court when they have alleged facts establishing a concrete injury and a sufficient causal relationship between the injury and the alleged violation and if the injury can be remedied by a judicial decree. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 646 (Pon. 2016).

Under the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999, any person may commence a civil suit on his own behalf to enjoin any person who is alleged to be in violation of § 5-107 of that Act, and "person" includes any individual, corporation, partnership, association or other entity, and any governmental entity including, but not limited to, the FSM or any of the FSM states or any political subdivision thereof, and any foreign government, subdivision of such government, or any entity thereof. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

When a plaintiff has not alleged a concrete injury and a sufficient causal relationship between the injury and the alleged "violation," its claims will be dismissed because standing must be found for each count of a complaint or that count will be dismissed. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 648 (Pon. 2016).

A standing issue is addressed first, as it is a threshold issue going to a court's subject matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Standing and justiciability are threshold issues going to the FSM Supreme Court's subject-matter jurisdiction and thus are addressed first. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

Even when an injury sufficient to satisfy the constitutional standing requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350 (Pon. 2017).

A mother cannot sue, as "next of kin," on behalf of her son when her son has reached the age of majority. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 350-51 (Pon. 2017).

When a plaintiff, since she lacks standing to sue, cannot identify any specific interests that her son would assert if her interest was transferred to him, the matter will be dismissed without prejudice to allow the son to assert any claims he may have against the FSM Social Security Administration. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 (Pon. 2017).

An entity that claims to own certain property has standing to sue another for what it perceives as wrongful interference with its rights in that property. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 368 (Pon. 2017).

A decedent's estate ceased to own Pohnpei land once the Pohnpei Court of Land Tenure ruled on the heirship petition for that land and the time to appeal that decision expired. Because the decedent's estate does not have, and, since Pohnpei Court of Land Tenure ruling, has not had, any interest in the property, it has no standing to seek the relief regarding that land. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

When the estate's ownership of the property ended in 2001 when the Pohnpei Court of Land Tenure issued its decision in the heirship proceeding for that property, the estate could not state a claim against the bank or its agents for events that occurred after the estate's ownership ended. It lacked standing. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

When no particular powers were expressed in an administrator's temporary appointment, although he was expected to help resolve the "overlappings" between two estates, and when the subsequent order

granted extensive powers to the co-administrators without making any distinction between the two full co-administrators and the temporary one, the court must, solely for the purpose of the pending motions, take as true the temporary administrator's assertion that he remains the estate's co-administrator and assume that since his administrator's powers were not otherwise limited, he has the power to sue on the estate's behalf to preserve the estate's assets. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

A plaintiff generally cannot assert the rights of a third party as her own. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 154 (Chk. 2019).

Any person in the actual and exclusive possession of the property may maintain the trespass action, although the person has no legal title, and is in wrongful occupation, as for example under a void lease, or in mere adverse possession. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 (Chk. 2019).

Standing is a threshold issue. To have standing to bring a matter before a court, the plaintiff must allege facts establishing a concrete injury and a sufficient causal relationship between the injury and the alleged violation and that the injury can be remedied by a judicial decree. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

To have standing, a party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. And, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

An individual lacks standing and should be dismissed when she has no sufficient stake in the outcome of a dispute over a bankruptcy receiver's compensation or payments to creditors because she was neither an "interested party" nor a co-debtor, but, since her involvement with the case was as an insider who had improperly received property of the debtor's estate and converted it to her use, she as an individual, arguably, as the insider recipient of a fraudulent transfer, may be an "interested party" solely with respect to the fraudulently transferred property. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

If the decedent would, if living, have standing to bring the suit, then the administratrix of his estate would have standing to do so. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

The debtor, as an interested party, has sufficient stake in the matter for standing to try to reopen his own bankruptcy case. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

The administratrix of an estate of a former debtor would have standing to seek relief under Bankruptcy Rule 9024 for alleged overpayments to creditors and to the bankruptcy receiver because she seeks reconsideration of, or relief from, the bankruptcy case orders allowing those claims by the creditors and the receiver. Panuelo v. Sigrah, 22 FSM R. 341, 357 (Pon. 2019).

A party generally cannot assert the rights of a third party as its own when challenging a search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

– Certification of Issues

When a case in a state or local court involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty, on application of a party or on its own motion the court shall certify the question to the Supreme Court appellate division. The Supreme Court appellate division may decide the case or remand it for further proceedings. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Under article XI, section 8 of the FSM Constitution, a state court receiving a proper motion is required to certify any substantial constitutional question to the FSM Supreme Court appellate division for proper disposition. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 501 (Pon. 1984).

Article XI, section 8 of the Constitution, providing for state court certification of issues of national law, gives the FSM Supreme Court appellate division another tool to oversee the development of national law jurisprudence, but also provides the option of remand so that the state court may address issues of national law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Under normal circumstances, the decision as to whether to decide or remand a question certified under article XI, section 8 of the Constitution will be made only by the constitutionally appointed justices of the FSM Supreme Court, without convening a third judge and without oral argument. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Unless definite articulable reasons to the contrary appear, questions certified under article XI, section 8 of the Constitution normally will be remanded to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Where the issues certified to the FSM Supreme Court by a state court under article XI, section 8 of the FSM Constitution are narrowly framed and not capable of varying solutions, and it appears that a greater service may be provided by simply answering the questions posed by the state court, the FSM Supreme Court will not remand the certified questions to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 35 (App. 1989).

Certified questions are decided by those constitutionally appointed justices who are not disqualified. Etscheit v. Adams, 6 FSM R. 608, 609 (App. 1994).

The Constitution provides that the FSM Supreme Court Appellate Division may decide questions certified from state and local courts, not from the FSM Supreme Court Trial Division. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM R. 608, 610 (App. 1994).

When the FSM Supreme Court appellate division receives a certified question from a state or local court it has the discretion to decide the question or to remand it for decision. Jackson v. Kosrae, 7 FSM R. 504, 505 (App. 1996).

Certified questions will normally be remanded to state court unless well-articulated reasons are presented for their resolution by the FSM Supreme Court appellate division. When the state court might resolve the case without reaching the certified constitutional question remand is proper. Jackson v. Kosrae, 7 FSM R. 504, 506 (App. 1996).

Certified questions narrowly framed and not capable of varying resolutions may be accepted by the FSM Supreme Court appellate division when a greater service would be provided by answering the questions posed. Pernet v. Woodruff, 10 FSM R. 239, 241 (App. 2001).

– Chuuk

Lease agreement executed by the Chuuk State is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM R. 130, 135-36 (Chk. S. Ct. Tr. 1991).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM R. 178, 179-80 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

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

A court begins its analysis with the presumption that all legislative enactments are constitutional. The burden is on the plaintiff to clearly demonstrate to the court that the ordinance is unconstitutional. Wainit v. Weno, 7 FSM R. 121, 122 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM R. 208, 210 (Chk. 1997).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM R. 577, 578 (Chk. S. Ct. Tr. 1998).

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

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, a

citizen's continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution's supremacy clause provides that the Chuuk Constitution is the supreme law of the state, and that an act of government in conflict with it is invalid to the extent of the conflict. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution bans taxes on real property. In re Engichy, 12 FSM R. 58, 69 n.6 (Chk. 2003).

In determining the extent of the powers of the judiciary under a state constitution, the rule is that the state constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM R. 252, 262-63 (Chk. S. Ct. Tr. 2003).

The relevant Chuuk constitutional provisions do not bar the Legislature from providing by statute for an appeal directly from the Chuuk State Election Commission to the Chuuk State Supreme Court appellate division. The Constitution does provide for appeals from administrative agencies to the Chuuk

State Supreme Court trial division, but the Constitution does not make the trial division's jurisdiction exclusive, and the trial division's jurisdiction is further qualified with the proviso "as may be provided by law." Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Legislature, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, has the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division with an appeal to the appellate division and a further possible appeal to the FSM Supreme Court appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

A member of the Chuuk Legislature may hold no other public office or public or private employment with a few exceptions and membership on an election tribunal is not one of those exceptions. The Chuuk Constitution is the supreme law of Chuuk and a governmental act by a municipality that violates it is invalid to the extent of the violation. The inclusion of state legislature members on a municipal Special election tribunal commission violated the Chuuk Constitution and so that that body's composition was improper and its acts invalid. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director, which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Criminal Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to

amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

Chuuk State Constitution's transition clause provides that statutes in force at the time the Constitution took effect remain in effect to the extent they comply with the Constitution, or until amended or repealed. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

While the Chuuk Constitution provides the Chuuk State Supreme Court with concurrent jurisdiction over land disputes, Article VII, § 3(d) of the Chuuk Constitution allows the specific court to be prescribed by statute. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Chuuk – Case or Dispute

The judicial decision-making power is typically exercised by a court which has heard competing contentions of adversaries having sufficient interests in the outcome to thoroughly consider, research, and argue the points at issue. Even then, a court's declarations of law should be limited to rulings necessary to resolve the dispute before it. Thus, the case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the plaintiff seeks declaratory relief, the court has jurisdiction to issue a declaratory judgment so long as there is a case or dispute within the meaning of Chuuk Constitution, article VII, §§ 3 and 4. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the primary issue is whether the Board had legal authority to terminate a director at the time the termination was allegedly made and when that issue remains a living controversy regardless of who the current Board members are, the action will continue unabated. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 221 (Chk. S. Ct. Tr. 2008).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

The appellate court will not consider a municipal election ordinance's validity when that ordinance's two alleged defects may be remedied or addressed before the next municipal election. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Chuuk – Case or Dispute – Mootness

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

No justiciable controversy is presented when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

When an appeal is dismissed as moot, the established practice is for the appellate court to reverse or vacate the judgment below and dismiss the case, but when the case below has already been dismissed, no purpose is served by vacating that dismissal and then dismissing it again. In such cases, the appellate court will make no order about dismissal addressed to the trial court. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

An action for declaratory relief is moot when the government has rescinded the orders that the plaintiff sought to have declared unlawful. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 630 (Pon. 2020).

– Chuuk – Case or Dispute – Ripeness

Chuuk courts are restricted in hearing only "live" cases, meaning the case must be one appropriate for judicial determination. A matter is appropriate for judicial determination when there is a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. Thus, when a defendant has not yet stood trial and thus may not be convicted, the question of whether a potential sentence constitutes a cruel and unusual punishment is merely hypothetical and academic and not yet appropriate for judicial determination. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

– Chuuk – Case or Dispute – Standing

Although the standing requirement is not explicitly stated in the Chuuk constitution, the implied requirement that a party have standing should be interpreted to implement the constitutional requirement that a "case" or "dispute" exist. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When jurisdictional issues are inextricably intertwined with the case's merits and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction will be denied, and if a motion to dismiss

for lack of standing is denied, the court does not somehow imply that, at that stage of the proceedings, it has made any findings on a claim's merits. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219 (Chk. S. Ct. Tr. 2008).

When the record is not sufficiently developed to enable the court to either resolve the factual and legal issues as to whether Board members' terms had expired when the decision to terminate the director was made, or to determine if, as a matter of law, the Board members were legally entitled to act in a *de facto* capacity despite the expiration of their terms, there are still significant factual and legal issues that need resolution before the court can make a final determination on the Board's standing to sue the director. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 219-20 (Chk. S. Ct. Tr. 2008).

When the Board has a clear statutory mandate allowing it to terminate a director for cause; when there is no authority to support the argument that a governmental agency or department must obtain the Attorney General's consent in order to file suit over a matter that is committed to its discretion; and when the Attorney General is a defendant in the lawsuit, it would severely test the notion that the Board has certain matters committed to its discretion if it could not enforce the exercise of its discretion without an adversary's consent. When it is alleged that the Director failed to comply with the Board's decision to terminate his directorship, and the Board has the discretion to terminate the director for cause, the Board has standing to enforce the exercise of its discretion since whether the Board's exercise of its statutory duty to terminate the director was legal and enforceable is a justiciable controversy in which the Board has a direct interest. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 (Chk. S. Ct. Tr. 2008).

If the Attorney General did have exclusive authority to determine when suits could be brought by instrumentalities of the executive branch, then all matters committed to the discretion of executive officials would, in effect, really be within the Attorney General's discretion. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220 n.3 (Chk. S. Ct. Tr. 2008).

When the Attorney General's office is representing an opposing party and therefore disqualified from representing the Board and when the question of whether the Board had the authority to terminate a directorship and of whether that termination was valid creates a case or dispute that is ripe for judicial determination, the Attorney General's consent is not required for there to be standing. And any issues regarding the Board's chosen counsel may be addressed through a motion to disqualify or other means, but it is not relevant to standing analysis. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 220-21 (Chk. S. Ct. Tr. 2008).

– Chuuk – Due Process

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).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective

application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Among the fundamental rights of Chuuk citizens set forth in Article III of the Chuuk Constitution is the right of due process of law. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

One of the fundamental due process rights afforded to criminal defendants is the right to be brought without unnecessary delay before a judicial officer, and that the period of confinement prior to initial appearance cannot exceed, except in extraordinary cases, twenty-four hours. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement, may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would

violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

The Chuuk Constitution mandates that no person may be deprived of life, liberty, or property without due process of law, and the essence of due process is notice and an opportunity to be heard. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130l (Chk. S. Ct. Tr. 2018).

The titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title because due process makes that person an indispensable party to the action. Courts generally hold court orders void when the real party of interest was not present and the matter concerned the removal of that (indispensable) party from a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A stipulated motion, that proffers no proof of service on the real party of interest, but asks the court to void the real party in interest's years-old, un-appealed determination of ownership and thus seeks to dispossess her of her property rights without notice or hearing, asks the court to issue an order in violation of the real party in interest's due process rights. The court will deny any such motion because voiding a determination of ownership based on stipulation that fails to provide notice to the real party of interest violates the real party of interest's due process rights under the Chuuk Constitution. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130m (Chk. S. Ct. Tr. 2018).

Chuuk Public Utilities Corporation is a semi-public entity where the governor of Chuuk appoints its board of directors; it is thus a government actor whose actions are subject to the mandates found within the Chuuk Constitution – including the declaration of rights clause. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that

easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

– Chuuk – Equal Protection

The protection afforded by the Chuuk Constitution due process and equal protection provisions can only be asserted when the denials of such rights is based on account of race, sex, religion, language, dialect, ancestry, national origin, or social status. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

– Chuuk – Impairment of Contracts

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

When the State of Chuuk is a party to a contract there is a distinction between a breach of a contract by the state and impairment of the obligation of the contract. The distinction depends on the availability of a remedy in damages. If the state's action does not preclude a damage remedy the contract has been

breached and the non-breaching party can be made whole. The state has the same power as an individual to break or terminate contracts. As long as the private individual or company that is the other party has a remedy at law no impairment of the obligation of contracts occurs. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

– Chuuk – Interpretation

When a constitutional provision is ambiguous and no constitutional convention journal was ever compiled then the constitutional convention reports may be consulted to discern the framers' intent. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

In deciding whether the new rule should be applied retroactively from the date of the court's judgment, or prospectively when rendering judgments on new constitutional rules, courts are to be guided by the following three factors: 1) the purpose to be served by the particular new rule; 2) the extent of reliance which had been placed upon the old rule; and 3) the effect on the administration of justice of a retroactive application of the new rule. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210-11 (Chk. S. Ct. Tr. 1993).

Where there has been good-faith reliance on an old rule, and retroactive application of the new rule would defeat such reliance, and where retroactive application would only unjustifiedly burden the administration of justice with meritless claims doubting the good faith reliance on the old rule, the new constitutional rule will apply to the parties of the case and be given prospective effect. Nimeisa v. Department of Public Works, 6 FSM R. 205, 211-12 (Chk. S. Ct. Tr. 1993).

When the language of the Chuuk Constitution does not define the term "tidelands" contrary to the common usage of the word or its accepted legal definition, and the legislative history does not indicate that the framers intended another meaning the court will employ the meaning of the term consistent with its legal usage at the time of the Constitution's enactment. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where constitutional language is borrowed from another constitution the borrowed language will be interpreted in the light of the interpretation of the original language, but insertion of new or different language must be interpreted to intend that some sort of new or different meaning be given to that altered portion of the constitutional text. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

In interpreting a provision of the Chuuk Constitution that is identical to the same provision in the United States Constitution it is appropriate, in the absence of any local precedent, to look to the law of the jurisdiction from which the provision was drawn. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 341 (Chk. S. Ct. Tr. 1995).

It is true that when a provision of the Chuuk Constitution is ambiguous, and because no constitutional convention journal was ever compiled, the constitutional convention reports may be consulted to discern the framers' intent. But the constitutional provision must first be ambiguous, unclear, or inconclusive before a court can proceed to the legislative history to determine the provision's meaning. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Statements prepared afterward for use in a lawsuit are not satisfactory legislative history and cannot be used to show the framers' intent. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

Language in a committee report in support of language that did not become part of the constitution cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

When the meaning of a constitutional provision is forthright, a court will apply its analysis to the constitutional provision's language as it appears on its face. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When a section of the Chuuk Constitution is clear on its face, consideration of this provision's legislative history is inappropriate. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the

real intent of the framers. At best it can only be used to show what was not their intent. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

When constitutional language is clear, no outside reference is needed to explain any ambiguity. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

While courts will not refuse to pass on the constitutionality of statutes in any proceeding in which such a determination is necessarily involved, the courts' invariable practice is not to consider the constitutionality of state legislation unless it is imperatively required, or unavoidable. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

Analysis of the constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Any part of a constitution should be interpreted and considered against the background of other provisions of the same constitution. An effort should be made to reconcile all provisions so that none is deprived of meaning. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

If the wording of the constitutional provisions is unambiguous, the words should control, and when more than one constitutional provision has an effect on the question being decided, the varying provisions must be interpreted in a manner which gives effect to each provision, so that no provision of the constitution is rendered meaningless. In re Paul, 11 FSM R. 273, 278 (Chk. S. Ct. Tr. 2002).

In interpreting constitutional provisions, courts must seek to ensure that the purposes sought to be accomplished by the constitution are not defeated by the interpretation of any particular provision. No court is authorized to so construe any clause of a constitution as to defeat its obvious ends when another construction will enforce and protect it. A constitution must be interpreted so as to carry out the general purposes of the government, and not defeat them. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

A constitution is to be liberally construed, not only according to its letter, but also according to its true spirit, to carry into effect the principles of government which it embodies and the general purpose of its enactment. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

The principle of practicality provides that when two interpretations of constitutional language are available and one is productive of invalidity and chaos, while the other saves validity and avoids chaos, the latter interpretation will be adopted. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

When a particular interpretation of a constitutional provision has been in effect for a long period without objection, any practice adopted through such an interpretation may create acceptance of the practice by acquiescence. A long-continued understanding and application of a provision amounts to a practical construction of it. Such a construction, acquiesced in for many years, is frequently resorted to by the courts because it is entitled to great weight and will not be disregarded unless it clearly appears that it is erroneous. The general rule is that the exercise of powers and general acquiescence therein for a long period of years, especially if commencing with the government's organization, may be treated as fixing the construction of the Constitution and as amounting to a contemporary and practical exposition of it. Kupenes v. Ungeni, 12 FSM R. 252, 262 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the

appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM R. 252, 263-64 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM R. 252, 265 (Chk. S. Ct. Tr. 2003).

A constitutional provision that requires things to be done without prescribing the result that should follow if those things are not done, is directory in character, not mandatory. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

In analyzing constitutional questions, a court should consider all provisions of that constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A court must be careful not to read into a constitution provisions which are not there nor rewrite a constitution to include provisions that seem to be omitted. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk Constitution is clear and unambiguous that when referring to the Governor's office, a Governor's "term" is a fixed four-year period. Thus, the phrase "current term" clearly means that if a governor is re-elected for a second four-year term, new nominations (or re-nominations) must be submitted to the Senate but otherwise a cabinet official may remain in office for a full four years unless the Governor earlier removes him (or he is impeached or he resigns). But when a new governor fills out the remainder of his predecessor's unexpired term, the new governor may retain the existing cabinet officials and special assistants without submitting their names for reconfirmation. Senate v. Elimo, 18 FSM R. 137, 139-40 (Chk. S. Ct. Tr. 2012).

The specific meaning of the phrase "current term" or "term" as used in the Chuuk Constitution means a fixed number of years, as set by the Constitution. From the Chuuk Constitution's context, "term" when applied to the executive branch office-holders can only refer to the fixed four-year period. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

In rendering a decision, the Chuuk State Supreme Court must first consult and apply legal sources of Chuuk State. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

Because Chuuk's people have continuously recognized that "land is life"and because of the particular sacredness with which the Chuukese as a community, value land, this must be reflected in the court's interpretation of the Chuuk Constitution. The protections extended to "real property" under the Chuuk Constitution are more extensive than those guaranteed under the FSM Constitution. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Unnecessary adjudication of Chuuk constitutional questions should be avoided, if possible. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Chuuk – Municipalities

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

The Chuuk Constitution provision that permits continued operation of existing municipalities pending the adoption of their own constitutions does not permit the continuation of functions outside "the limits prescribed by" the Chuuk Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

Chuuk municipalities do not have the power to levy taxes until such time as that power has been delegated to them by statute. No such delegation has occurred. Stinnett v. Weno, 8 FSM R. 142, 147 (Chk. 1997).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

While under the Chuuk Constitution the "powers and functions of a municipality with respect to its local affairs and government are superior to statutory law," the key phrase in this constitutional provision is "local affairs." Gambling is of statewide concern and an area properly within the state legislative function and does not fall under the cloak of "local affairs." Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provision granting municipalities "superior" powers is of such unique character that no similar constitutional provision has been found which gives municipalities such extensive control over legislative affairs. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 546 (Chk. S. Ct. Tr. 2000).

Because the Chuuk Constitution gives municipalities full power over local affairs and government the Governor cannot, by Executive Order, require municipalities to relinquish any control over municipal employees. Udot Municipality v. Chuuk, 9 FSM R. 586, 588 (Chk. S. Ct. Tr. 2000).

Each municipality in Chuuk must adopt its own constitution, which must be democratic and may be traditional. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

Chuuk municipalities must adopt their own constitutions within limits prescribed by the Chuuk Constitution and by general law, but a municipality's powers and functions with respect to its local affairs and government are superior to statutory law. Neither term "general law" or "statutory law" is defined. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 n.6 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides for each existing municipality to adopt a municipal constitution within three years of the Chuuk Constitution's effective date and for the state legislature to enact enabling legislation to carry that out. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

The Chuuk Constitution provides that a municipality existing on the effective date of the Chuuk Constitution will continue to exercise its powers and functions under existing law, pending adoption of its constitution. Buruta v. Walter, 12 FSM R. 289, 292 (Chk. 2004).

There is no provision in Chuuk law to classify a municipality under the Chuuk Constitution as a "quasi-municipality." Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

Both the constitutional and statutory provisions providing for Chuuk municipalities to adopt their own constitutions within three years of the state constitution's effective date are directory, not mandatory because neither prescribes what result should follow if a municipality fails to adopt a constitution within the allotted time and since the Chuuk Constitution provides that a municipality will continue to exercise its powers and functions under existing law, pending its adoption of a constitution. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

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

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

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

– Chuuk – Taking of Property

To consider a lease valid when the lessee state government cannot be compelled to honor it would be unconstitutional taking of lessor's property. Billimon v. Chuuk, 5 FSM R. 130, 136 (Chk. S. Ct. Tr. 1991).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

– Declaration of Rights

In developing the Constitution's Declaration of Rights, the Committee on Civil Rights, and subsequently the Constitutional Convention, drew almost exclusively upon constitutional principles under United States law. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

Statutory provisions which carried over from the Trust Territory Code and were reproduced and referred to as a "Bill of Rights" in 1 F.S.M.C. 101-114, may retain some residual vitality in the unlikely event that they furnish protection beyond those available under the Constitution's Declaration of Rights. FSM v. George, 1 FSM R. 449, 454-55 (Kos. 1984).

The provisions in the Declaration of Rights in the FSM Constitution concerning due process and the right to be informed are traceable to the Bill of Rights of the United States Constitution. Engichy v. FSM, 1 FSM R. 532, 541 (App. 1984).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

The Declaration of Rights expresses ideals held sacred by all who cherish freedom and is the essential core of the FSM Constitution. Louis v. Kutta, 8 FSM R. 208, 212 (Chk. 1997).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The Declaration of Rights (article IV of the FSM Constitution) protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 157 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

The FSM Constitution's Declaration of Rights search and seizure provision, FSM Const. art. IV, § 5, is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. Const. amend. IV. When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 13 FSM R. 433, 444 (Chk. 2005).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Since the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution, FSM courts may look to United States decisions to assist in determining the meaning of article IV, section 7 because when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 150, 151 n.1 (Chk. 2006).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The Constitution's Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

The provisions in the FSM Constitution's Declaration of Rights are traceable to the United States Constitution's Bill of Rights, and when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, United States authority may be consulted to understand its meaning. The FSM speedy trial right is patterned after the United States Constitution. Chuuk v. William, 15 FSM R. 381, 387 n.1 (Chk. S. Ct. Tr. 2007).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

The FSM Declaration of Rights was modeled after the U.S. Bill of Rights, and so the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation, found in the FSM Constitution's Declaration of Rights in Article IV, section 6, and in the U.S. Constitution in its Sixth Amendment. FSM v. Halbert, 20 FSM R. 42, 46 n.3 (Pon. 2015).

While the court must first look to FSM sources of law rather than begin with a review of other courts' decisions, when an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision, United States authority may be consulted to understand its meaning. FSM v. Jappan, 22 FSM R. 49, 53 n.2 (Chk. 2018).

The Constitution's prohibition of bills of attainder in the Declaration of Rights applies to all legislative bodies within the FSM, not just to the FSM Congress. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The FSM Declaration of Rights provisions, FSM Const. art. IV, apply to all governments in the FSM. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 n.2 (Chk. 2019).

Because the FSM Declaration of Rights is to a substantial degree patterned after provisions in the U.S. Constitution and because U.S. cases were relied upon to guide the Micronesian constitutional convention that framed it, U.S. authority may be consulted to understand its meaning. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 264 n.4 (Chk. 2019).

Since Section Five of the Declaration of Rights is patterned after the U.S. Constitution's Fourth Amendment, U.S. authority may be consulted to understand its meaning. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 n.16 (Pon. 2020).

– Due Process

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision-maker reviews the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

The words "due process of law" shall be viewed in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Alaphonso v. FSM, 1 FSM R. 209, 216-17 (App. 1982).

The Constitution's Due Process Clause requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Article XI, section 6(b) of the Federated States of Micronesia Constitution requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM R. 239, 243-44 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM R. 239, 247 (Pon. 1983).

Strict judicial observance of due process is necessary to insure respect for the law. In re Iriarte (I), 1 FSM R. 239, 248 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The Federated States of Micronesia Constitution does not contemplate that FSM citizens should be required to travel to Saipan or to petition anyone outside the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM R. 239, 253 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this constitution. In re Iriarte (II), 1 FSM R. 255, 265 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM R. 255, 272 (Pon. 1983).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues

and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983).

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. When disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM R. 339, 362-63 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions, from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM R. 339, 363 (Pon. 1983).

When there is reason to believe that provisions of a public land lease may have been violated by the lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by the lease's renewal provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM R. 405, 421 (Pon. 1984).

Governmental bodies' adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Etpison v. Perman, 1 FSM R. 405, 422-23 (Pon. 1984).

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

The Due Process Clause, FSM Const. art. IV, § 3, is based upon the Due Process Clause of the United States Constitution and courts can look to interpretations under the United States Constitution for guidance. Ludwig v. FSM, 2 FSM R. 27, 35 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Constitution's Due Process Clause is drawn from the United States Constitution and FSM courts may look to decisions under that Constitution for guidance in determining the meaning of this Due Process Clause. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM R. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM R. 209, 214 (App. 1986).

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 claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional due process issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

There is no deprivation of due process in a case in which the government at the trial elicited testimony revealing that it had custody of certain physical evidence but did not attempt to introduce it, and in which the defendant made no request that it be produced. Loney v. FSM, 3 FSM R. 151, 155 (App. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

An expectation of continued government employment, subject only to removal by a supervisor, is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The Due Process Clause of article VI, section 3 of the Constitution of the Federated States of Micronesia requires proof beyond a reasonable doubt as a condition for criminal convictions in the Federated States of Micronesia. Runmar v. FSM, 3 FSM R. 308, 311 (App. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM R. 365, 368 (Pon. 1988).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Once it is determined that a statute establishes a property right subject to protection under the Due Process Clause of the FSM Constitution, constitutional principles determine what process is due as a minimum. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

In assessing the government's shorter term, preliminary deprivations of private property to determine what, if any procedures are constitutionally necessary in advance of the deprivation, the FSM Supreme Court will balance the degree of hardship to the person affected against the government interests at stake. Semes v. FSM, 4 FSM R. 66, 75 (App. 1989).

The Due Process Clause of the FSM Constitution's Declaration of Rights is based on the Due Process Clause of the United States Constitution. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

In determining whether the constitutional line of due process has been crossed, a court must look to such factors as the need for application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Paul v. Celestine, 4 FSM R. 205, 208-09 (App. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 8 (Pon. 1991).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM R. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM R. 35, 45 (App. 1991).

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).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

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).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM R. 218, 222 (App. 1991).

The actions of a private corporation partly owned by a government should not be considered "state action" for the purposes of due process analysis. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 298 (Kos. 1992).

Under FSM law there is no property right to particular levels of tort compensation triggering due process protections. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362-63 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clause of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Employment opportunity is a liberty interest protected by due process. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

When a landowner voluntarily signs a statement of intent for an easement for a road even though the state failed in is duty of care to inform him that he could refuse to sign, the state has not violated the landowner's due process rights. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When counsel is allowed such a short preparation time that counsel's effectiveness is impaired then the accused is deprived of due process and effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

Something more than a state merely misinterpreting its own law, such as that the state's interpretation was arbitrary, grossly incorrect, or motivated by improper purposes, is needed to raise a legitimate due process issue. Simon v. Pohnpei, 6 FSM R. 314, 316 (Pon. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

Physical abuse committed by police officers may violate a prisoner's right to due process of law. Persons who are not suspects have no less protection from physical abuse and injury at the hands of the police. The right to due process of law is violated when a police officer batters a person instead of protecting her from harm because persons who are not in police custody have a due process interest in personal security that may be violated by the acts of police officers. Davis v. Kutta, 7 FSM R. 536, 547-48 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

The failure of the state to adequately train police officers, and the excessive use of force used by officers is a violation of a victim's right to due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

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).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

Because a government employee's pay is a form of property a government cannot deprive the employee of without due process of law, a state's failure to pay to the allottees money withheld from employees' paychecks for allotments constitutes a government deprivation of the employees' property without due process. Oster v. Cholymay, 7 FSM R. 598, 599 (Chk. S. Ct. Tr. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM R. 633, 638-39 (Chk. 1996).

The FSM Supreme Court appellate division has jurisdiction over an appeal where a motion to recuse filed by the appellant in the state court appellate division raised an issue of due process under the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27-28 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM R. 108, 111 (App. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person. The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

The Kosrae State Charter's due process clause, in effect in 1982, did not extend any greater protection than the FSM Constitution's. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The essential features of procedural due process, or fairness, require notice and an opportunity to be heard. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM R. 301, 305 (Chk. 1998).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM R. 419, 424 (App. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in

violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

It is a violation of a litigant's constitutional right to due process for a trial court to rely on evidence, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

It is error for a trial court to rely on exhibits never identified, described, or marked at trial. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

A special master commits reversible error when its decision has relied on unidentified sketches not a part of the record and about which there was not extensive testimony and cross examination. Thomson v. George, 8 FSM R. 517, 523 (App. 1998).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

From June 1997 when Kos. S.L. No. 6-131 became law to February 1998 when new PSS regulations were adopted, there was no administrative appeals process for grievances, which void raises substantial due process concerns under the FSM and Kosrae Constitutions. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128-29 (Pon. 1999).

Under the doctrine of minimum contacts a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The mere allegation that an out-of-state defendant has tortiously interfered with contractual rights or has committed other business torts that have allegedly injured a forum resident does not necessarily establish that the defendant possesses the constitutionally required minimum contacts. In order to resolve the jurisdictional question, a court must undertake a particularized inquiry as to the extent to which the defendant thus purposefully availed itself of the benefits of the forum's laws. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Generalized legal conclusions in an affidavit have no bearing on the particularized inquiry, which a court must undertake in order to determine whether defendants have minimum contacts with the forum in order to make a prima facie case that the court has personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Two – possibly four – letters and unspecified phone calls sent into the FSM are insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Personal jurisdiction is not established when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is not sufficient to establish the requisite minimum contacts so as to sustain long-arm jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 131 (Pon. 1999).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Cases involving either prisoners or someone confronted with or being arrested by a police officer – someone in custody or being taken into custody – or cases involving intentional acts, are inapplicable to claims that other state actions that are either negligence, gross negligence or reckless disregard constitute a civil rights or due process violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 411-12 (App. 2000).

Historically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property. Mere negligence did not raise a constitutional violation. The Due Process Clause does not purport to supplant traditional tort law and does not transform every tort by a state actor into a constitutional violation. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Neither the state defendants' alleged deliberate indifference to the dredging site's neighbors' safety nor their failure to warn those neighbors of any known risks can properly be characterized as a constitutional violation that would take the case out of the realm of ordinary tort law. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

When an amended complaint's deliberate indifference or negligence allegations do not rise to the level of a constitutional due process claim, it does not state a claim upon which the FSM Supreme Court can grant relief and the trial court's dismissal of the amended complaint will therefore be affirmed. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM R. 442, 449-50 (App. 2000).

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 court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM R. 79, 85 (App. 2001).

No one should ever be penalized or sanctioned by a court for successfully insisting upon those constitutional rights which are his due. In re Sanction of Woodruff, 10 FSM R. 79, 87 (App. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

A person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was unwritten claim to continued employment under tenure. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process generally requires some form of fair hearing and rational decision making process when an important interest is at stake. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

In evaluating an alleged due process violation, courts usually are looking at the procedure that was followed by the government when, for example, the government is denying a benefit or taking some property from a party. Three important elements in establishing a procedural due process claim are: 1) whether the government is involved; 2) whether there is a life, liberty or property interest at stake; and, if so, 3) whether adequate due process procedures are employed by the government before a party is deprived of such an interest. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The constitutional guarantee of due process only protects parties from governments, and those acting under them. To establish a due process claim, a plaintiff must show that a government entity or official, or one acting at the direction of the government, is involved. When the defendants were merely acting as individuals and not as representatives of Congress, or at the direction of Congress, the plaintiff cannot demonstrate the requisite government involvement, and when there is no government action, there can be no due process violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Government employment that is "property" within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM and Kosrae Constitutions, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665-66 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

There is no assurance of continued employment given by statute when the statute provides that the Corporation may retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it deems appropriate, or given by regulation

when no regulations exist. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The due process clause prevents governmental authorities from depriving individuals of property interests without first giving an opportunity to be heard. The clause protects against governmental rather than private deprivations of property. The party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

The actions of a private corporation which is partly owned by a government are not "state action" for purposes of due process analysis. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 667 (Kos. S. Ct. Tr. 2002).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM R. 672, 674-75 (Kos. S. Ct. Tr. 2002).

The personal nature of constitutional rights, and prudential limitations on adjudicating constitutional questions, preclude a criminal defendant from challenging a law on the basis that it may be unconstitutionally applied to others in situations not before the court. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred

more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Once the governmental defendants were dismissed there was no one against which to bring due process claims and civil rights taking claims so those claims were thus properly dismissed. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A plaintiff's claims for damages resulting from violation of his due process rights depend upon whether the defendant's actions were "state action." Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

If the court is unable to declare that the defendant authority is a quasi-governmental authority subject to the provisions of the due process clause of the Chuuk and FSM Constitutions, then the plaintiff's due process claims must fail. The plaintiff has the burden of proving that the defendant is a state actor. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

An Authority that has its own Board of Directors, is solely empowered to select its own officers, may sue and be sued in its own name and is responsible for its own debts, and owns its own assets is an autonomous agency that 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. Hauk v. Board of Dirs., 11 FSM R. 236, 240-41 (Chk. S. Ct. Tr. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM R. 262j, 262L (Pon. 2002).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear

all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

The public entity responsible for public lands is required to make its decisions openly and after giving appropriate opportunity for participation by the public and interested parties. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest

without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

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

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

The omission of an adopted daughter's name from a verified probate petition, signed under oath by the petitioner, resulted in the failure to provide the adopted daughter her constitutional due process rights to be notified of the probate proceeding, have an opportunity to be heard and may have also affected her rights as an heir of the decedent. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract,

without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM R. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM R. 558, 561-62 (Chk. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

When there are multiple dates upon which an election result was certified, the date of making the certification public and notifying the candidates would comport best with due process as the certification starting point for election contests. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

If the court enters a default judgment different in kind from or exceeds in amount the relief that was prayed for in the demand for judgment, such a default judgment would be void and subject to collateral attack. Serious due process questions would be raised. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 (Chk. 2005).

A default judgment that included damages for claims not raised in the complaint or sums not prayed for by the plaintiff and that was rendered against a defendant who never appeared would violate due process. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 278 (Chk. 2005).

In the case of an injunction, non-parties who are persons who are the defendant's "officers, agents, servants, employees and attorneys," or "persons in active concert or participation" with the defendant and successors to a party, are the only non-parties against whom judgments and orders may be lawfully enforced, that is, enforced without violating the non-party's constitutional right to due process and Rule 71. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

The general rule is that orders cannot be enforced against non-parties without violating the non-parties' constitutional rights to due process, and if an order can lawfully be enforced against someone it is because either that person is a party or it is an injunction being enforced and that person is a party's "officers, agents, servants, employees and attorneys," or a person "in active concert or participation" with a party. Ruben v. Petewon, 13 FSM R. 383, 390 (Chk. 2005).

A defendant's statutory right to be brought before the court within the 24 hours period goes to the heart of the procedural due process guaranteed to FSM citizens. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 499 (Pon. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

The usual cause of action when a governmental entity has exercised its regulatory powers improperly is a constitutional due process claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

When the presiding Land Court justice was required to disqualify himself, his failure to recuse himself was a violation of due process making the Land Court's decision contrary to law because the Land Court proceeding's presiding justice failed to recuse himself, and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

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).

A public officer is not denied due process of law by the abolition of his office before his term expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

It is error for a trial court to rely on exhibits never marked at trial. A justice commits reversible error when his decision has relied on a document that is not a part of the record. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 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).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

One alleged due process violation does not justify an aggrieved party's retaliatory due process violations. Dereas v. Eas, 14 FSM R. 446, 455 n.4 (Chk. S. Ct. Tr. 2006).

When the parties received a Land Commission determination from the Land Court, which then granted the appellants' request for a continuance after issuing its decision and which agreed to consider the appellants' motion to vacate the determination, if it was filed in writing; when the appellants filed their appeal, the Kosrae State Court agreed to hear the matter; when the appellants had notice and an opportunity to be heard at the preliminary and formal hearings and they participated in both the preliminary and final hearings and presented evidence regarding the parcel's alleged transfer; and when they were not served with the Land Commission adjudication, the appeals period did not run, the Land Commission and Land Court complied with statutory requirements and conducted a fair proceeding. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When no hearing was held before the court issued its December 14, 2001 order in aid of judgment and no finding was made on the debtor's ability to pay in December 2001, the December 14, 2001 order was issued in violation of the State's right to due process and the order constitutes an abuse of the trial court's discretion. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

By failing to refer motions to recuse and to disqualify the presiding justice to another justice, as required by the State Judiciary Act, the trial justice violated the movants' rights to due process of law. Ruben v. Hartman, 15 FSM R. 100, 108 (Chk. S. Ct. App. 2007).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

An argument that the trial court denied a litigant due process by depriving her of her property without allowing her to be heard is without merit when the trial court decision being appealed was handed down in response to the litigant's own summary judgment motion, through which she is assumed to have stated her position, and when a hearing was held on the motion at which the litigant was represented by counsel. She was afforded full opportunity to be heard. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 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).

Due process issues are questions of law, and questions of law are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

There is no constitutional due process right to a trial if the matter may properly be resolved by summary judgment. Trial is a process used to resolve disputed issues of material fact. A court must deny a summary judgment motion unless, viewing the facts in the light most favorable to the party against whom judgment is sought, it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Thus a decision without trial would violate due process rights only if there was a genuine issue of material fact that would preclude summary judgment because that issue would need to be tried. It is also an abuse of the trial court's discretion to grant summary judgment if a genuine issue of material fact is present. Albert v. George, 15 FSM R. 574, 579-80 (App. 2008).

The due process concerns in a Rule 11 plea hearing do not apply with equal force to the context of a revocation of probation or supervised release. FSM v. William, 16 FSM R. 4, 8 (Chk. 2008).

A single justice's reprimand of a legal services corporation law firm must be reversed where it was based on a factual error that the attorney appearing for the appellants was appearing as a member of the law firm when he was appearing only on his own behalf and his close relatives. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 106-07 (App. 2008).

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

The Constitution's due process protections do not require appellate oral argument. Oral argument on appeal is not an essential ingredient of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 127 (App. 2008).

It is essential that the trial court insure that its own notice procedures satisfy the requirements of due process. In order to comply with due process, Chuuk State Supreme Court Civil Procedure Rule 5(a) requires that service of all notices and other papers must be made upon each party affected. Under Rule 5(b), service must be made on a party's counsel, if represented, and may be effectuated either by "delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Rule 5(b) further specifies that delivery of "a copy" means handing it to counsel; or leaving it at his office with his clerk of other person in charge thereof; or if there is no one in charge, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein. Service by placing a notice in a counsel's box in the clerk's office is not a method of service recognized by Rule 5(b). Farek v. Ruben, 16 FSM R. 154, 156-57 (Chk. S. Ct. App. 2008).

A variance is a discrepancy or disagreement between the allegations of the charging instrument and the proof adduced at trial. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When considering whether a variance warrants relief, the court must examine whether the variance was material or prejudicial, that is, whether it affected the substantial rights of the accused. Any error, defect, irregularity or variance which does not affect substantial rights is disregarded. The issue is whether the accused is given sufficient notice of the charges against him so as to be able to present his defense and not be taken by surprise by the evidence offered at the trial and also to be protected against another prosecution for the same offense. Kasmiro v. FSM, 16 FSM R. 243, 245 (App. 2009).

When the prosecution failed to incorporate the accused's alleged possession of a rifle into its prosecution even after witness testimony, choosing instead to remain within the parameters of its original allegations all the way through closing argument, namely that the accused's presence in the boat alone supported conviction, it is reasonable to conclude that the accused was never given proper notice of his alleged conduct, and, even if the accused was given notice of the conduct underlying the violation after the witness testimony, such notice coming midway through the FSM's case-in-chief is not sufficient notice for the accused to prepare his defense against the factual allegations ultimately used to convict him. Kasmiro v. FSM, 16 FSM R. 243, 246 (App. 2009).

Allegations in the information alleging a criminal violation must be proven in order to obtain a conviction. It is not sufficient that the evidence show a violation of the statute specified in the information if the actual violation is different from the one alleged. Kasmiro v. FSM, 16 FSM R. 243, 247 (App. 2009).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording, that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A government's breach of a contract, without more, does not violate due process rights. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Government employment that is "property" within meaning of Due Process Clause cannot be taken without due process, but, in order for property to be protected under FSM Constitution, there must be claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons, and when the plaintiff does not allege that she was ever given an assurance of any kind of continual employment beyond the specific dates set forth in her short-term contract, her claim will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

A distinction exists between a mere opportunity for employment and employment itself. When a plaintiff was not denied any employment opportunity by the defendant and she was not guaranteed employment but was allowed to apply – on two separate occasions – for the position and interviewed after each such job application and was granted employment after the first job announcement but was not selected for employment after the second job announcement because the defendant deemed another the most qualified, the plaintiff's claim that she was denied, without due process, any opportunity to be employed by the defendant is without merit and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497-98 (Pon. 2009).

An election contest petitioners' failure to name all real parties in interest in their pleadings can subject the court's rulings to being later challenged by the real parties in interest as a violation of their due process rights to defend their interest in the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 516 n.1, 517 (Chk. S. Ct. App. 2009).

It is constitutional error for a trial court to rely on exhibits never identified, described, or marked at trial, but the trial court does not commit reversible error when there was extensive testimony and cross-examination of witnesses concerning the exhibits' contents. In such an instance, it is the witness testimony that is the evidence before the court. George v. George, 17 FSM R. 8, 10 (App. 2010).

When the trial court did not rely on unadmitted evidence to reach its decision and when there was substantial trial testimony from which the trial court could reasonably find that the defendant owed the plaintiff $6,220.52, the trial court decision did not violate the defendant's due process rights and its factual finding that $6,220.52 was the amount owed was not clearly erroneous. George v. George, 17 FSM R. 8, 10 (App. 2010).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by

substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

The fundamental concept of procedural due process is that the government may not strip citizens of life, liberty, or property in an unfair, arbitrary manner. When such important individual rights are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

When a defendant has submitted no evidence showing that the government's failure to inform him of the state correctional facility's rules, procedures, and schedules unconstitutionally deprived him of a life, liberty, or property interest and when, since such an admonition is unnecessary, the "Prisoner Rights and Responsibilities" document which the defendant cites does not inform inmates that they have a responsibility to not commit unlawful acts while incarcerated, the defendant cannot claim that he did not know he was not permitted to leave the correctional facility premises without a court order or police escort while incarcerated and a motion for dismissal on that ground will be denied. FSM v. Andrew, 17 FSM R. 213, 215 (Pon. 2010).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

An arrestee's right to be informed of her right to counsel when arrested is a due process right. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

If a presiding Land Court judge fails to recuse himself when he is required to, it is a due process violation and the matter must be remanded to the Kosrae Land Court with instructions and guidance for re-hearing the matter. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503-04 (App. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 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).

Government inaction, or even deliberate indifference, is not a due process violation. Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

The fundamental concept of procedural due process proscribes the government from stripping its citizens of property in an unfair or arbitrary manner. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

Since property may not be taken by the government, even in aid of a judgment, without due process of law, due process of law in executing the writ may be assured by directing the executing officer to strictly comply with the statutory provisions for levying a writ of execution. Saimon v. Wainit, 18 FSM R. 211, 215 (Chk. 2012).

A pretrial detainee has a stronger right than a convicted prisoner to liberty, and that right is protected by the Due Process Clause while a convicted prisoner's claims upon liberty have been diminished through due process so the convicted prisoner must rely primarily on the protections from cruel and unusual punishment. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When an impeached U official was arrested on the U Impeachment Panel's bench warrant and brought within 24 hours before the only court competent to try him for the contempt charge, the U Impeachment Panel, where he was heard and then convicted of contempt, he received the process of law due him. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

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).

Although there was no Kosrae or FSM Constitution in 1960 and constitutional rights are generally prospective, not retroactive, the Trust Territory Bill of Rights, whose due process clause was presumed to have the same meaning as in the United States, was in effect then. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Due process issues are generally questions of law that are reviewed de novo. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

The fundamental concept of procedural due process is that the government may not strip a citizen of life, liberty, or property in an unfair, arbitrary manner. Before such important individual interests are

exposed to possible governmental taking or deprivation the Constitution requires that the government follow procedures calculated to ensure a fair and rational decision making process. Manuel v. FSM, 19 FSM R. 382, 390-91 (Pon. 2014).

A prisoner's unlawful 161-day detention after the end of his sentence meant that he was deprived of his constitutional right not to be deprived of his liberty without due process of law. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

Generally, the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

A convicted prisoner whose sentence had already ended but who was still kept imprisoned for 161 more days can assert a procedural due process claim – he was denied his liberty without due process when, without a hearing or an opportunity to be heard, his prison term was effectively extended and his release date bypassed. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Thus, a person's termination by a non-governmental employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

An employer is not a governmental entity when it was not created by the FSM national government nor by any government established or recognized (national, state, or local) by the FSM Constitution; when it is merely funded, in part, by the FSM national and four state governments; when it is incorporated in the United States Commonwealth of the Northern Marianas and its parent corporation was created by the act of the United States Congress so that even if it were a governmental entity, it would be an entity of a government to which the FSM Constitution's due process clause does not apply. It will therefore be entitled to summary judgment on a former employee's wrongful termination in violation of constitutional due process cause of action. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

There is no due process violation from the different composition of the two appellate panels when the first appellate panel had before it an interlocutory appeal and the later appeal was from a final judgment on the merits. There is no due process reason why a different panel could not be constituted for the second appeal case when the first panel had completed its work on the appeal case before it and then, after a new and final trial division decision, a different group of three judges was empaneled to hear the new appeal case. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 603, 607 (App. 2014).

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Due process requires that for a warrant to issue, the report must demonstrate "probable cause" and this determination must be made by a judicial officer before jurisdiction is extended. Thus, the sentencing court takes primary responsibility for initiating probation revocation proceedings. To delegate that authority would be tantamount to abdicating the judiciary's sentencing responsibility to the executive. Ultimately, the court retains the discretion to reject or accept the probation officer's recommendations. FSM v. Edward, 20 FSM R. 335, 339 (Pon. 2016).

Regardless of the lesser standards that apply in revocation proceedings, due process is required. FSM v. Edward, 20 FSM R. 335, 340 (Pon. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 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 the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

When the appellant's designated family representatives acted on her behalf and were her agents for the Land Court proceedings, she cannot aver that she was unaware of the proceeding and her due process deprivation claims are wanting. Lonno v. Heirs of Palik, 21 FSM R. 103, 108 (App. 2016).

Litigants cannot argue that, in their view, they were deprived of due process because the Pohnpei Supreme Court appellate division wrongly decided a matter of state law. A Pohnpei Supreme Court appellate division decision on Pohnpei state law is always correct. It is not correct because the Pohnpei

Supreme Court appellate division is infallible. It is correct because, until the Pohnpei Supreme Court appellate division reverses or overrules its prior decision, it is final. Edwin v. Kohler, 21 FSM R. 133, 137 (App. 2017).

When the Pohnpei Supreme Court appellate division granted the appellant's requests for 124 days of enlargement to file her brief and when, a month after the brief had actually been filed, that court effectively denied her timely request for the four days of enlargement by concluding that she "chose to remain silent in the end" and then dismissed her appeal, under these circumstances, this denial of the appellant's timely request to file her brief three or four days late was so arbitrary and capricious as to be an abuse of discretion that violated the appellant's right to due process under the FSM Constitution, and which would require reversal. Silbanuz v. Leon, 21 FSM R. 336, 341 (App. 2017).

When a defendant's claim for due process violation is unsubstantiated and uncorroborated except by the defendant's testimony, the defendant's motion to suppress and to dismiss his case in its entirety will be denied. FSM v. Isaac, 21 FSM R. 370, 377 (Pon. 2017).

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

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 owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with those requirements is the due process that is sufficient (and required) for the valid issuance of a new certificate of title to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When a person has not been tried, convicted, and sentenced, no question of cruel and unusual punishment arises. That is why the alleged mistreatment of pre-trial arrestees is subject to a due process analysis while that of convicted prisoners is analyzed under the cruel and unusual punishment standard. Chuuk v. Silluk, 21 FSM R. 649, 653, 656 (Chk. S. Ct. Tr. 2018).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. The due process guarantee does not apply to the actions of private parties. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 11 (Pon. 2018).

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 court may abuse its judicial discretion by an unexplained, lengthy delay or by the failure to exercise its discretion within a reasonable time because the failure to exercise discretion is an abuse of the discretion. Higgins v. Pohnpei Supreme Court App. Div., 22 FSM R. 63, 67 (Pon. 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).

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).

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).

The constitutional guarantee of due process was established to protect persons from governmental actions and not private persons or entities not acting under the law. Micronesian Legal Services Corporation is not a governmental entity created by the national, state, or local government. George v. Palsis, 22 FSM R. 165, 175 (App. 2019).

The FSM Constitution's due process clause is derived from the U.S. Constitution and thus U.S. cases may be consulted for guidance in interpretation, emphasizing those cases in effect at the times of the FSM Constitution's framing (1975) and the ratification (1978). Wolphagen v. FSM, 22 FSM R. 96, 102 n.1 (App. 2018).

Since the knowing use of perjured testimony is fundamentally unfair, such a conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the fact-finder's judgment. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

The prosecution, as an entity, has a constitutional obligation not to deceive the fact-finder or to allow the fact-finder to be deceived by the prosecution's witnesses; thus, the prosecution cannot let false testimony by any of its witnesses stand uncorrected. Wolphagen v. FSM, 22 FSM R. 96, 102 (App. 2018).

If the evidence sought actually has no probative significance at all, no purpose would be served by requiring a new trial simply because an inept prosecutor incorrectly believed the prosecution was suppressing a fact that would be vital to the defense. Wolphagen v. FSM, 22 FSM R. 96, 102-103 (App. 2018).

If the prosecution's suppression of evidence results in constitutional error, it is because of the evidence's character, not the prosecutor's. Wolphagen v. FSM, 22 FSM R. 96, 103 (App. 2018).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty, or property in an unfair, arbitrary manner, and when such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

The constitutional guarantees of due process and equal protection extend to aliens. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 n.8 (Pon. 2020).

– Due Process – Notice and Hearing

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM R. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. When conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM R. 239, 251 (Pon. 1983).

When the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and

the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM R. 255, 260 (Pon. 1983).

No judge should mete out criminal punishment except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness. In re Iriarte (II), 1 FSM R. 255, 262 (Pon. 1983).

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM R. 255, 264-65 (Pon. 1983).

When the plaintiff has been given reasonable notice of his trial and he and his attorney failed to appear to adduce evidence and prosecute the claim, his inactivity amounts to abandonment of his claim and it is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM R. 405, 414-15 (Pon. 1984).

Basic notions of fair play, as well as the Constitution, require that Public Lands Authority decisions be made openly and after giving appropriate opportunity for participation by the public and interested parties. Etpison v. Perman, 1 FSM R. 405, 420-21 (Pon. 1984).

A fundamental requisite of due process of law is the opportunity to be heard. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. Etpison v. Perman, 1 FSM R. 405, 423 (Pon. 1984).

Radio announcement is a common and generally effective method of notice. Yet radio notice alone of a proposed hearing to determine rights to future use of public lands is not constitutionally sufficient to a person who: 1) asserts a direct and serious claim based on his activities on, and actual possession of, the land; 2) had given written notice to the decision-maker of his wish to assert the claim; 3) lives relatively near the decision-maker's office; and 4) had a work location where telephone or written messages to him could have been received during the day. Etpison v. Perman, 1 FSM R. 405, 427 (Pon. 1984).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Due Process Clause prevents governmental authorities from depriving an individual of property interests, without first according an opportunity to be heard as to whether the proposed deprivation is permissible. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Only in extraordinary circumstances, where immediate action is essential to protect crucially important public interests, may private property be seized without a hearing. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it takes the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

A party is not deprived of due process of law in a case in which a judgment is entered against it on a cause of action raised by the trial court, where the party had notice and an opportunity to be heard, even though the cause of action does not appear in the pleadings and no amendment of the pleadings was made. United Church of Christ v. Hamo, 3 FSM R. 445, 453 (Truk 1988).

Only in extraordinary circumstances where immediate action is essential to protect crucially important public interests, may private property be seized without a prior hearing of some kind. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM R. 179, 212 (Pon. 1991).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM R. 93, 99 (App. 1993).

Where a party attended the meeting at which the common boundary was set and thus had actual notice, and filed no adverse claim to the boundary location that would trigger the statutory right to notice,

but claimed he was not aware of the adverse boundary until eight years later, and waited another four years before filing suit, the claimant's repeated failure to timely assert his rights does not demonstrate a due process violation. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

One who receives actual notice cannot assert a constitutional claim that the method of notice was not calculated to reach him. Setik v. Sana, 6 FSM R. 549, 553 (Chk. S. Ct. App. 1994).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right; nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

It is constitutional error for the trial court to rely on a special master's report, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 669 (App. 1996).

Notice and an opportunity to be heard are the essence of due process of law. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM R. 108, 110 (App. 1997).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

Persons entitled to notice of a proceeding generally are those who are to be affected by a judgment or order therein and the requirement of notice applies only to those whose substantial interests are affected by the proceeding in question. Louis v. Kutta, 8 FSM R. 228, 230 (Chk. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a prescriptive *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

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

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM R. 301, 304 (Chk. 1998).

Due process requires that the parties be given the opportunity to comment upon evidence. A fundamental requisite of due process of law is the opportunity to be heard. Notice and an opportunity to be heard are the essence of due process of law. Langu v. Kosrae, 8 FSM R. 455, 458 (Kos. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested

party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

When a person appeared as a witness at the formal hearing for a parcel and testified in support of another's claim to that parcel and did not make her own claim to the land, she was not entitled to notice of the Determination of Ownership for the parcel because she was not an "interested party." Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When parties had no claims to the land at the time the title was determined they were not entitled to notice. Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

When a party had no claim to the land at the time ownership was determined, that party was not entitled to statutory notice of the determination of ownership for a parcel and she does not have standing to appeal the Land Commission's decision and the court does not have jurisdiction over her appeal claims. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When a person, entitled to be served notice of the hearing, was not served notice of the hearing and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law, and the Determination of Ownership will be set aside as void and remanded to the Land Commission to hold formal hearings. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

Personal service of the Determination of Ownership is required upon all parties shown by the preliminary inquiry to have an interest in the parcel. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM R. 589, 595 (Pon. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM R. 79, 84 (App. 2001).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. In re Sanction of Woodruff, 10 FSM R. 79, 89 (App. 2001).

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM R. 89, 96-97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM R. 89, 97 (App. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Notice and an opportunity to be heard is the essence of due process. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM R. 601, 606 (Chk. S. Ct. App. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

When the two issues a party seeks reconsideration of were raised in the other parties' filings and at the scheduled conference (which it declined to attend), the party thus had the opportunity to (and did)

respond to other parties' claims, then the party was given the process that was due it. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91-92 (Pon. 2003).

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

The trial court has an obligation to insure that a defendant was served with the notice of trial issued by the trial court, and on that basis an appellate court will reverse the trial court judgment and remand the case for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Notice and an opportunity to be heard are the essence of due process of law. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances. At the core however is the right to be heard. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM R. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial, and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

The procedural due process guarantee of notice protects not only the parties involved but upholds the court's integrity as well. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A trial court commits plain error, and violates the litigant's right to due process, when it fails to serve notice of a trial date and time on a *pro se* litigant. It therefore abuses its discretion when it denied the litigant's motion for a new trial. Panuelo v. Amayo, 12 FSM R. 365, 375 (App. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

It is a violation of due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the Land Commission has not followed statutory notice requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the determination of ownership as void and remand to Kosrae Land Court for further proceedings. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

That the Kosrae Land Court went beyond the statutory requirements for notice, and provided too many notices to persons who were not entitled to personal notice by law and that this "extra" notice created a dispute, does not result in or cause a violation of the appellant's constitutional due process protections. Kun v. Heirs of Abraham, 13 FSM R. 558, 560-61 (Kos. S. Ct. Tr. 2005).

When a party had at least six days notice that it might be found in contempt and that Rule 37(b)(2)(A) sanctions might be imposed and those six days should have been sufficient and when the party took the opportunity to file various papers concerning the issues raised but did not directly address the prospect of contempt or of Rule 11 or Rule 37(b)(2)(A) sanctions although it was on notice they would be considered at the hearing, thus if the party was not heard on the Rule 37(b) sanctions, it was not because it did not have an opportunity to be heard after it was on notice that Rule 37(b)(2) sanctions would be considered. FSM Dev. Bank v. Adams, 14 FSM R. 234, 250-51 (App. 2006).

Rule 11 sanctions may be imposed on a party or his attorney or both. Since the constitutional guarantee of due process requires that the person, upon whom a sanction might be imposed, must be

given notice of that possibility and the opportunity to be heard before any sanction can be imposed, before the court could consider the sanctions motion as a whole, the party's former counsel, who had withdrawn before the sanctions motions were filed, had to be given notice that Rule 11 sanctions might be imposed and an opportunity to be heard on the issue as it might relate to him. The court therefore ordered that the motion be served on former counsel, and that the clerk serve a copy of the court order on him. Amayo v. MJ Co., 14 FSM R. 355, 359 (Pon. 2006).

The essence of due process is notice and an opportunity to be heard. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the Board of Trustees gave a party a lease to Lot No. 014-A-08 (which was duly recorded at the State Land Registry) and took its lease payments for years up to and including the January, 2005 lease payment, even assuming that the Board's later ruling that the party's lease is invalid is correct, the Board is estopped from asserting that the party had no rights in Lot No. 14-A-08 in January 2005 and the party had a right to, at a minimum, notice and an opportunity to be heard when the Board was determining whether there was a valid lease to the lot or should it be advertised for lease. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 461-62 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Actual notice as required by statute must be given for preliminary and formal hearings at the Land Commission. Notice is required because it gives a chance to be heard. However, the consequences for failing to give notice of decisions are different. The party has had a chance to be heard and to present evidence. Serving notice of an adjudication, or decision, is required in order to give the party a chance to appeal. If a party is not properly served notice of a determination of ownership, the statutory appeals period that an appeal shall be made within sixty days of the written decision's service upon the party, does not run. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

If a party was not served notice and was then denied the right to appeal, his due process rights are violated. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The issuance of an order against the State without permitting the State both notice and an opportunity to be heard, either orally at a hearing or by giving sufficient time to submit a written response, violates the State's right to due process. Chuuk v. Andrew, 15 FSM R. 39, 42 (Chk. S. Ct. App. 2007).

Since, in any lawsuit that would remove someone's name from a certificate of title or that would deprive a person of ownership of the registered land that the certificate or determination represents, the constitutional right to due process requires that that person is an indispensable party to the action, an August 20, 1998 judgment that was rendered without either titleholder having been made a party to the case and having had an opportunity to be heard is thus void, and could be collaterally attacked by later civil actions. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Civil Rule 71 does not (and cannot) overthrow the due process clauses of the Chuuk and FSM Constitutions. Notice and an opportunity to be heard is the essence of due process of law. No court can grant as relief a request that would nullify a certificate of title to a person who is not before the court and award different person with the title to land for which a certificate of title had already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

When the appellants' counsel was given notice of the hearing and chose not to appear, request a continuance, or take any other action, the appellants' due process rights were not violated because due process requires notice and an opportunity to be heard and this was provided. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 144 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002 without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

When no court notice of the case's hearing on the merits was ever served on the defendants, the defendants' and the real party in interest's rights to due process of law under the Chuuk and FSM constitutions were violated because a trial court commits plain error, and violates a litigant's right to due process, when the court fails to serve the notice of a trial date and time on that litigant. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

Any order in aid of judgment may be modified by the court as justice may require, at any time, upon application of either party and notice to the other, or on the court's own motion. But a court cannot decide its own motion without first giving either party notice or an opportunity to be heard because that would violate a litigant's due process rights guaranteed by both the Chuuk and FSM Constitutions since notice and an opportunity to be heard is the essence of due process. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

When a court makes a motion sua sponte, it must give the parties notice and an opportunity to respond before it decides; just as when a party makes a motion, the other party generally must be given an opportunity to respond before the court rules. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

Since a suit maintained as a class action under Rule 23 has res judicata effect on all class members, due process requires that notice of a proposed settlement be given to the class. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 443, 445 (Yap 2007).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

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

When, although the notice did not cite any of the Rules of Professional Conduct that the reprimand found that the attorney violated, it was adequate notice because it did state what act or omission of counsel may lead to discipline and cited the relevant appellate rule. The attorney ought to have been aware that he was facing some sort of sanction for not timely filing a brief and that the sanction would be imposed under Rule 46(c). Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 108 (App. 2008).

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

When the court, through a single justice, has made its own motion to dismiss as a matter of docket management, it cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

When an order constituted the *sua sponte* motion to dismiss and the notice to the appellants of the motion to dismiss and when, although it did not cite Rule 27(c), the order did give notice that the appeal was subject to dismissal and the factual basis (failure to file a brief and thus failure to comply with Rule 31) for the possible dismissal, the appellants had notice of the facts they had to respond to and the probable result if they were unable to show cause. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 113 (App. 2008).

Imposition of Appellate Rule 46(c) disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard is therefore required. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

An order that never mentions the legal services corporation law firm was inadequate on its face to serve as notice to sanction the firm, and when it was not served separately on the firm so that the firm could respond, the firm thus had no notice of any possible sanction. Although the firm is definitely responsible for supervising its attorneys, its reprimand, no matter how deserving, must be reversed because of the complete absence of any separate notice to it. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

Although the notice provided to an attorney in an order did not cite any of the Rules of Professional Conduct that the later reprimand found that the attorney violated, when it was notice that, if the attorney could not show good cause why no opening brief had been filed, he would then be subject to disciplinary action under Rule 46(c). Since it stated what act or omission of counsel may lead to discipline and cited Rule 46(c), the notice given was adequate for the attorney to have understood that he was facing a possible sanction for not timely filing a brief, and that, if it were imposed, the sanction would be imposed under Appellate Rule 46(c). Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 123 (App. 2008).

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

The court may, through a single justice, make its own motion to dismiss as a matter of appellate docket management. A court cannot decide its own motion without first giving the parties notice and an opportunity to be heard because that would violate a litigant's due process rights guaranteed by the FSM Constitution since notice and an opportunity to be heard is the essence of due process. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 128-29 (App. 2008).

Service of a notice of trial by placing the notice in a counsel's box in the clerk's office is deficient service and tantamount to non-service when it results in a party's failure to be informed of the noticed trial date. When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM constitutions are violated, and the trial court's failure to serve notice of a trial date and time is plain error. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A judgment or final order entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

A trial court's failure to notify the appellants of trial was plain error and the judgment that was entered is therefore void. Farek v. Ruben, 16 FSM R. 154, 157 (Chk. S. Ct. App. 2008).

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

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

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause, constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is provided, this is not read as an attempt to authorize immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not violated as a pre-termination hearing was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 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).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

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).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not

claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

The essential features of procedural due process require notice and opportunity to be heard. Palsis v. Kosrae, 17 FSM R. 236, 241 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 629 (App. 2011).

When the court is considering revision of a partial summary judgment, it must provide the parties with notice adequate to give them an opportunity to present evidence relating to any revived issues at trial. FSM v. Shun Tien 606, 18 FSM R. 79, 82 (Pon. 2011).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When a court's notice of trial on the merits is not served on a party, that party's rights to due process of law under the Chuuk and FSM Constitutions are violated, and the failure to serve notice of a trial date and time is plain error. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Notice and an opportunity to be heard is the essence of due process as guaranteed by both the Chuuk and FSM Constitutions. Phillip v. Moses, 18 FSM R. 247, 250 (Chk. S. Ct. App. 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner's limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A party's written Rule 11 motion constituted notice that it was seeking sanctions in the form of attorney's fees and the adverse parties' written opposition was their opportunity to be heard and they were heard on the papers. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

When a sanction is the result of the court's own motion, it must be vacated if the trial court did not give notice that it was making a motion because a trial judge abuses his discretion when, without prior notice and an opportunity to be heard, the court sua sponte imposes a Rule 11 sanction on an attorney. The manner in which Rule 11 sanctions are imposed must comport with due process requirements, and, at a minimum, notice and an opportunity to be heard are required. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 376 (App. 2012).

Since a defendant must receive notice of all claims for relief on which the court might find him liable and enter judgment against him, a default judgment that was rendered against a defendant who never appeared and that included damages for claims not raised in the complaint served on him or sums not prayed for by the plaintiff would violate due process. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 412, 416 (Yap 2012).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence of which a party has not had both notice and the opportunity to be heard, but when the defendants were served with all documents since the beginning of the matter and had the opportunity to respond but failed to do so, their claim for a violation of due process has no merit. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 501 (App. 2013).

A plaintiff, who challenges another's right to an interest in land and seeks to exercise an interest in land that excludes that other's supposed rights to the land, ought to, as a matter of due process, name that other as a party defendant. Otherwise that other party will be deprived of its interest without notice

and an opportunity to be heard. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

Notice and an opportunity to be heard are the essence of due process of law. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The imposition of disciplinary sanctions is subject to due-process scrutiny. Adequate notice and an opportunity to be heard are the essence of due process. In re Sanction of Sigrah, 19 FSM R. 305, 309 (App. 2014).

When the notice of the hearing did not mention that the subject of the hearing was the plaintiffs' request for a temporary restraining order and a preliminary injunction, the defendant's opportunity to be heard at the hearing was rather meaningless, especially when shortly into the hearing the trial judge stated that he had enough in the file to issue a temporary restraining order preventing the defendant from entering the land. Since the defendant had inadequate notice of the hearing and its subject matter, he did not have an adequate opportunity to be heard before the decision to grant a temporary restraining order was announced during the hearing or before the preliminary injunction entered the next day. Nena v. Saimon, 19 FSM R. 317, 326 (App. 2014).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 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).

Notice and an opportunity to be heard constitute the core requirements of due process and fundamental fairness. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence to which a party has not been provided both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A land claimant was dutifully allowed to be heard on his claim, when he actively participated in the proceedings, when during the Land Court hearing, he proceeded to "open the door," in terms of an attempt to transform the complexion of the relief sought from a boundary dispute into a claim encompassing an entire parcel; when it was undisputed between the parties, that he owned land situated on a plat, which lies adjacent to the parcel; and when the Land Court received testimony regarding that adjacent plat in order to determine the exact location of the respective properties. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

When the right of way determination was part of the 1997 remand and therefore cannot be characterized as a surprise to the appellant; when he was provided ample opportunity to be heard and present evidence, with respect to where the boundary between land he owned and that of the appellee was located; when he took the opportunity to claim a boundary that would award him the entire parcel; and when there was zealous participation on his part during the relevant proceedings, he received both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

A party's assertion, sounding in a deprivation of an individual's unassailable right to be afforded both notice and an opportunity to be heard, is refuted by the fact that he actively participated in the subject proceedings. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

An allegation of a procedural due process violation, that takes issue with a purported lack of notice, strains credulity when it is belied by previously-filed, repeatedly unsuccessful motions to stave off the transfer of ownership that show that, not only were the claimants provided adequate notice, but they were also afforded ample opportunity to be heard and took full advantage of such participation. Setik v. Perman, 21 FSM R. 31, 38-39 (Pon. 2016).

When raising res judicata *sua sponte*, due process requires that the court give the opposing party notice and an opportunity to respond. Waguk v. Waguk, 21 FSM R. 60, 68 (App. 2016).

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

It is well established, that when a judgment has been entered against a party without notice or an opportunity to be heard, it is void and subject to direct or collateral attack at any time. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

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).

Due process requires that a non-probationary government employee be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

Even though the lessee's inertia could lead the Board to reasonably conclude that the leased lot would remain undeveloped, this dormancy did not relieve the Board from providing notice and an opportunity to be heard with regard to the improperly executed lease to a different lessee. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with these requirements is the due process that is sufficient (and required) for the issuance of a new certificate of title to the grantee. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

Notice and opportunity to be heard are the core requirements of due process and fundamental fairness, and, although specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances, the right to be heard is at the core. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

The right to appeal a decision under the Education Code is set forth in 40 F.S.M.C. 114, which provides for administrative appeals under 17 F.S.M.C. 108-113. The statutes do not require that applicants for administrative relief be given notice of their right to appeal an adverse decision, but

personal notice is required of all hearings after a petition for administrative review is filed. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

A letter seeking clarification about the criteria used to assess a college's faculty and curriculum, the constituents and qualifications of the evaluation taskforce, and the legality of certain agreements, and that offered to discuss the report and findings, does not constitute a petition for a review hearing, which would trigger the requirement of personal notice of hearings. Nor does a telephone call asking "Why are you doing this?" constitute such a petition. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634 (Pon. 2020).

– Due Process – Substantive

Because there is a rational basis, linked to legitimate government purposes of increasing the availability of health care services, for providing immunity from patient suits to U.S. Public Health Service physicians, the Federal Programs and Services Agreement's immunity provisions are not in violation of a plaintiff's due process rights. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the legislature's rationality. Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

With substantive due process, the court looks at the rationale or legitimacy of the governmental interest. In subjecting a statute or court rule to the requirement of substantive due process, the court asks: 1) Does the government have power to regulate the subject matter? If the statute or rule is not within the power of the government, such statute or rule will be struck down. 2) If the government has the power to regulate, the court next asks if what the statute or rule proposes to do bears a rational relationship to the implementation of the legislative goal. 3) Finally, where the statute or rule involved arguably infringes upon individuals' fundamental rights, the court must ask how important is the legislative objective. The court must ask if there is a compelling governmental interest to justify holding the statute

or rule valid, even though the statute might limit fundamental rights. FSM Dev. Bank v. Adams, 14 FSM R. 234, 248 n.6 (App. 2006).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

Substantive due process protects individual liberty interests against certain governmental actions regardless of the fairness of the procedure used to implement them. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

While procedural due process requires governmental decision-making to conform with the concept of what is fair and just, substantive due process, on the other hand, addresses the rationality of the legislature. With substantive due process, the court basically looks at the rationale or legitimacy of the governmental interest. Phillip v. Pohnpei, 21 FSM R. 439, 444 (Pon. 2018).

– Due Process – Vagueness

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct

often thought of as offensive or undesirable, but not directly dangerous to others. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Prohibitions against assaults with dangerous weapons fall within the more traditional realm of criminal law and therefore are entitled to greater deference by courts in determining whether they are unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing a claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

There is no suggestion in the Constitutional Convention Journal that the framers of the FSM Constitution wanted to depart from or expand upon United States constitutional principles concerning particularity and definitions in criminal statutes. Reliance in the Report of the Committee on Civil Liberties upon United States court decisions in explaining the words confirms that the intent was to adopt the American approach concerning the statutory specificity needed so as not to be unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit standards for those who apply them. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM R. 69, 73 (Pon. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Some generality may be inescapable in proscribing conduct, but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Certain types of criminal prohibitions are subject to greater scrutiny on grounds of vagueness. Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others, but prohibitions against assaults with dangerous weapons, for example, fall within the more traditional realm of criminal law and are therefore entitled to greater deference by courts in determining whether they are unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague. First, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police, judges and juries. FSM v. Anson, 11 FSM R. 69, 75 (Pon. 2002).

Because it is assumed that people are free to steer between lawful and unlawful conduct, it is necessary that laws give the people of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Vague laws may trap the innocent by not providing fair warning. FSM v. Anson, 11 FSM R. 69, 75-76 (Pon. 2002).

If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

A statute that provides clear notice and fair warning that an assault on a national public servant while she is working in her national government office is conduct prohibited by national law. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

Laws cannot define the boundaries of impermissible conduct with mathematical certainty. Whenever the law draws a line there will be cases very near to each other on the opposite side. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

When the purpose, intent and meaning of the Act can be ascertained by reading the disjunctive provisions of the statute together, and it is clear that Congress intended that conduct like that charged in this case be prohibited under national law the law is not unconstitutionally vague. FSM v. Anson, 11 FSM R. 69, 76 (Pon. 2002).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting the offense are listed. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM R. 388, 391 (Kos. S. Ct. Tr. 2003).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden. Laws must provide explicit standards for those who apply them. Kosrae v. Waguk, 11 FSM R. 388, 391-92 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

The criminal offense of driving under the influence, as defined in Kosrae State Code, Section 13.710, is not unconstitutionally vague. The term "under the influence" does give people of ordinary intelligence a reasonable opportunity to know and understand what conduct is prohibited and how to avoid violation. Kosrae v. Phillip, 13 FSM R. 285, 291 (Kos. S. Ct. Tr. 2005).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language. When the statute complained of, while not mathematically precise, gives fair notice of the acts that will be punished, payment for expenses other than expenses incurred in the course of official public relations, entertainment activities or constituent services necessary to advance the national government's purposes and goals, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Kansou, 14 FSM R. 128, 130 (Chk. 2006).

Kosrae State Code § 13.313 is unconstitutionally vague because it fails to provide a specific standard of criminal conduct and therefore does not give adequate notice of what type of speech is being regulated since a statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden and Kosrae State Code § 13.313 does not. Kosrae v. Taulung, 14 FSM R. 578, 580-81 (Kos. S. Ct. Tr. 2007).

Since statutory vagueness is a due process concept and since the wording of the Due Process Clauses of the Kosrae Constitution and of the FSM Constitution is identical, these two constitutional provisions may be treated as identical in meaning and in scope. The appellate court will proceed as if the statute is challenged under both. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Whether a challenged statute is unconstitutionally vague is a two-part analysis. The statute must provide fair notice to members of the public, and it must also furnish police and judges with adequate enforcement standards. Fair notice means that the law gives an individual of ordinary intelligence a reasonable opportunity to understand the proscribed activity, and to conform his conduct to the law's requirements. A law permits arbitrary and discriminatory enforcement if it does not provide explicit enforcement standards, and a vague law's defect is that it allows law officers and judges to subjectively determine basic policy questions on a case-by-case basis. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

Cases upholding the constitutionality of statutes criminalizing driving "under the influence" reflect the fact that alcohol, its consumption, and effects have long been a part of human experience. DUI statutes enacted with the arrival of the motor vehicle take that experience into account. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

The Kosrae DUI statute does not violate the vagueness doctrine because it employs the phrase "under the influence." It provides both law enforcement officers and judges with the necessary enforcement standards. "Driving under the influence" is commonly understood to mean driving in a state of intoxication that lessens a person's normal ability for clarity and control. A police officer will know that he may take enforcement action where he observes an individual exhibiting this commonly understood behavior. That a police officer must exercise his judgment in evaluating this behavior does not render the statute vague. Phillip v. Kosrae, 15 FSM R. 116, 120 (App. 2007).

"Driving under the influence" provides a judge with a sufficient enforcement standard. Based upon the evidence that a judge hears and is entitled to consider, he may determine whether a defendant was "under the influence" such that he was driving in a state of intoxication that lessened his normal ability for

clarity and control. The statute thus passes constitutional muster. Phillip v. Kosrae, 15 FSM R. 116, 120-21 (App. 2007).

When the accused either was or was not driving "under the influence," and it was the arresting officer's job to exercise his judgment to determine whether there was probable cause to believe the accused's ability for clarity and control had been lessened by his consumption of alcohol, or in other words, whether the accused was driving "under the influence," and when Kosrae's statute did not require the accused to offer an explanation for his conduct and any such exculpatory explanation would have been immaterial to his objective state of sobriety or lack thereof, the Kosrae DUI statute is not void for vagueness and does not violate the Due Process Clause of either the Kosrae Constitution or the FSM Constitution. Phillip v. Kosrae, 15 FSM R. 116, 121 (App. 2007).

A defendant's right to be informed of the nature of the accusations against him requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Chuuk v. Menisio, 15 FSM R. 276, 281 (Chk. S. Ct. Tr. 2007).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision or perfection of criminal statutory language, but the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Although some generality may be inescapable in proscribing conduct, the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must also provide explicit standards for those who apply them. When the statute complained of, even though not mathematically precise, gives fair notice of the acts that will be punished, the prosecution will not be dismissed on the ground that the statute was unconstitutionally vague. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague – first, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police and judges. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

A criminal statute's use of the term "under the influence of alcohol" does not render that statute void for vagueness and does not violate the FSM Constitution's Due Process Clause. FSM v. Aiken, 16 FSM R. 178, 182-83 (Chk. 2008).

When criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This

term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

When the defendants asked the plaintiffs' counsel to withdraw the offending motion or it would seek Rule 11 sanctions and their later Rule 11 motion was precise about what it sought sanctions for, the plaintiffs had the appropriate notice. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

As for the plaintiffs avoiding future sanctions, the order cannot be too vague since they are barred from filing any papers in Civil Action No. 1990-075 without first obtaining leave of court and have been since December 1995. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 377 (App. 2012).

When a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. However, a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute that is so vague and ill-defined that the acts prohibited cannot be understood by people of ordinary intelligence, cannot serve as a basis for criminal prosecution. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

The standard for statutes to comply with a defendant's "right to be informed" is that a criminal statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. The constitutional clauses speak of rights to be informed of the nature of the charges and to receive due process. This is not language calculated to require absolute precision or even the best possible statement of the charge or violation. Chuuk v. Silluk, 21 FSM R. 649, 653 (Chk. S. Ct. Tr. 2018).

The "definite, unambiguous, and certain" analysis is usually applied to statutory language which prohibits conduct as opposed to sentencing language. Courts are more deferential as to determining what constitutes a definite statement when sentencing guidelines are concerned. Chuuk v. Silluk, 21 FSM R. 649, 654-55 (Chk. S. Ct. Tr. 2018).

The court is subject to certain limits in sentencing when the state law sets a precise minimum of no less than five years imprisonment while the maximum sentence, as set by the FSM and Chuuk Constitutions, is life in prison because the Constitutions ban capital punishment. Chuuk v. Silluk, 21 FSM R. 649, 655 (Chk. S. Ct. Tr. 2018).

A statute that sets only a minimum sentence does not allow the court unbridled discretion to implement cruel and unusual punishments because the court is constrained by the FSM and Chuuk Constitutions; because the court has a traditional role of adjudication based on equity that involves the considering mitigating and aggravating factors before imposing sentence; and because all statutes are

presumptively constitutional. Thus, this statute is not so unconstitutionally vague or ambiguous as to violate a defendant's due process rights to be free from cruel and unusual punishment. Chuuk v. Silluk, 21 FSM R. 649, 655-56 (Chk. S. Ct. Tr. 2018).

When determining a statute's vagueness or ambiguity, the court must look to a statute that prescribes an offense that either forbids or requires the doing of an act. Thus, a sentencing requirement that states, "imprisonment for not less than five years, or a fine of not less than $5,000.00, or both" is not subject to a due process analysis for violating the defendant's right to know the nature and cause of the accusation against him because the statute's sentencing provision is not the part of the statute that forbids or requires the doing of an act. In order to attack a statute's vagueness, the court is restricted to looking at the statute that prescribes an offense or that forbids or requires the doing of an act. Chuuk v. Silluk, 21 FSM R. 649, 656 (Chk. S. Ct. Tr. 2018).

There is no requirement that a statutory sentencing provision's language contain absolute precision or perfection. Informing a defendant that the sentence constitutes a minimum of five years imprisonment is sufficient notice because the sentencing statute provides a clear and explicit notice of a monetary and sentencing minimum for the defendant and leaves the court the equitable power to set a cap upon the sentencing as justice demands and as restricted by the Chuuk and FSM Constitutions. Thus, the statute provides notice to the defendant that he may be sentenced to between five years and life. Chuuk v. Silluk, 21 FSM R. 649, 657 (Chk. S. Ct. Tr. 2018).

– Equal Protection

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM R. 165, 169 (App. 1989).

A patient's equal protection rights were not violated when there was no showing that the patient was treated differently from any other patient on the basis of her sex, ancestry, national origin, or social status. Samuel v. Pryor, 5 FSM R. 91, 106 (Pon. 1991).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clauses of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 367 (Pon. 1992).

The constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in article IV, section 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

The equal protection analysis and standards that apply to a discriminatory law also apply to a neutral and non-discriminatory law when it is being applied in a discriminatory fashion. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 146 (Pon. 1995).

Because the equal protection clause is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination a victim of a stray police bullet who cannot show any evidence of discrimination has no equal protection claim. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 n.8 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Isaac v. Weilbacher, 8 FSM R. 326, 336 (Pon. 1998).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The FSM Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

When the plaintiff has not alleged that he was battered based upon his sex, race, ancestry, national origin, language or social status, but has merely alleged that the police, in battering him violated his equal protection rights, The plaintiff's equal protection claim will be dismissed. Youp v. Pingelap, 9 FSM R. 215, 217 (Pon. 1999).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

The equal protection provisions of the FSM Constitution are in large part derived from those in the U.S. Constitution. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM R. 1, 8-9 (Chk. 2002).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

Article IV, section 4 of the FSM Constitution guarantees that similarly situated individuals are not treated differently due to invidious discrimination. AHPW, Inc. v. FSM, 12 FSM R. 114, 118 (Pon. 2003).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

When a plaintiff complained of a series of acts by various defendants that he felt were discriminatory, that is, that did not treat him in the manner to which he thought he was entitled, but he did not allege, nor did he put on any evidence, that he was discriminated against on the basis of sex, race, ancestry, national origin, language, or social status and no evidence was adduced that any of the acts complained of caused the plaintiff any damages, the court therefore dismissed this cause of action. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. Equal protection forbids only invidious discrimination. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

Both sections 3 and 4 of Article IV are designed to protect individuals from discrimination based on their membership in a class. A plaintiff's failure to allege intent to discriminate based on his membership in a particular class is fatal to his equal protection claim. Annes v. Primo, 14 FSM R. 196, 202 (Pon. 2006).

The failure to allege class-based discrimination may be fatal only to strict scrutiny analysis, that is, a plaintiff who fails to allege class-based discrimination is not dismissed but receives only rational basis review, but when the plaintiff is not challenging any particular law, the case is not susceptible to rational basis review. Annes v. Primo, 14 FSM R. 196, 202 n.1 (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).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

To make out a selective prosecution equal protection claim, an accused must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show

that his prosecution is based on an invidious classification of either sex, race, ancestry, national origin, language, or social status. FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007).

When the defendants do not claim that they were singled out for prosecution based upon their sex, race, ancestry, national origin, or language, but assert that they are being arbitrarily prosecuted based upon their "social status," and when they do not clearly state what their social status is that is the basis of the prosecution's alleged invidious classification and discrimination, it cannot be their status as high government officials (congressmen or former congressmen) because that is the same status as one (ex-president) who was not prosecuted and who the defendants claim was similarly situated so they cannot have been prosecuted based on the membership in that "classification." Furthermore, the choice to prosecute someone because of his or her status as a high government official is not an invidious classification because of the deterrent effect of such prosecutions and because of such prosecutions' effect to maintain the public confidence that public officials are not above the law. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

A person's position in government does not constitute "social status." The term "social status" refers to a person's rank or place in society. In traditional Micronesian societies, this could include a person's place or rank within his or her lineage, what caste he or she is a part of, whether and what traditional title the person might hold, or whether the person has chiefly [social] status. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 2007).

When the defendants cannot identify an invidious classification (which they assert is their "social status"), they cannot make out that element of a selective prosecution claim, especially when the court has doubts whether the purported examples of persons similarly situated are actually that. FSM v. Fritz, 14 FSM R. 548, 553 (Chk. 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).

FSM Constitution Article IV, section 4 guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, summary judgment is then appropriate. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 80 (Pon. 2007).

For equal protection purposes, a comparison between the pay of part-time college teachers and full-time teachers is not valid when the equal protection claim rests on the difference in the pay scales for part-time and full-time teachers because the part-time and full-time teachers are not similarly situated and the FSM Constitution equal protection guarantee requires a showing that individuals subject to the alleged discrimination be similarly situated. Nor are part-time teachers an enumerated class in Article IV, section 4 and that classification does not concern a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81-82 (Pon. 2007).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is whether the classification bears a rational relationship to a legitimate governmental purpose. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Paying full-time and part-time teachers at different rates per credit-hour bears a rational relationship to a legitimate governmental purpose because it allows the college flexibility with respect to its need to provide teachers on an ad hoc basis for over-enrolled classes and with its costs. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Even assuming that the Pohnpei Wage and Hour Law applies to a governmental organization employer and assuming that a claim under the statute was pled although the statute was not mentioned in the complaint, the claim is without merit when the court has determined that the positions of full-time and part-time teachers are different and the college may maintain different pay scales for them. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

When the college's part-time and full-time teachers are not similarly situated for equal protection analysis, and when, to the extent that the part-time and full-time teachers can be viewed as engaging in similar activities, the college's practice of paying its full-time and part-time teachers according to different pay scales for each credit-hour taught is rationally related to a legitimate government purpose, the college is entitled to summary judgment on a part-time teacher's equal protection claim. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

The Equal Protection Clause protects a person against discrimination based on account of sex, race, ancestry, national origin, language or social status, but a person's position in government employment does not constitute "social status." The term "social status" refers to a person's rank or place in society, not to his position in government. In traditional Micronesian societies, social status could include a person's place or rank within his or her lineage, what caste he or she is part of, whether and what traditional title the person might hold, or whether the person has chiefly (social) status. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314-15 (App. 2007).

A selective prosecution claim does not provide a basis for dismissal of the information because it is not a defense to the merits to the criminal charge itself, but an independent claim. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

The Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

If the discrimination is based on the individual's membership in one of the Article IV, section 4 enumerated classes, or if the discrimination affects a "fundamental right," the law or regulation is subject to strict scrutiny review. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

"Heightened scrutiny" is a level of scrutiny below strict scrutiny but above the rational relationship test that U.S. courts use in sex discrimination cases since sex is not an enumerated class in the U.S. Constitution's equal protection clause. In the FSM, sex is an enumerated class and the higher strict scrutiny analysis is applied. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 n.2 (App. 2008).

Since Article IV, section 4 prohibits discrimination based on sex, race, ancestry, national origin, language, or social status, any governmental action that classifies according to sex, race, ancestry, national origin, language, or social status constitutes an inherently suspect criteria. As such, the government must prove a compelling governmental interest in the classification. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591 (App. 2008).

When the appellant compares herself to two different male teachers with the same level of education, who were paid more than she because they were full-time teachers; when the only apparent reason for the pay difference is that they were full-time, not part-time, teachers; when no part-time teacher was paid more than the appellant was so that no male part-time teachers with the same level of education were paid more than she was and no FSM-citizen part-time teachers were paid more than she was; when the appellant does not claim that her status as a part-time teacher instead of being a full-time teacher was based on discrimination on the basis of sex or national origin, she has not made out a *prima facie* case of discrimination based on either sex or national origin and the trial court thus properly granted summary judgment in the College's favor on her sex and national origin discrimination claims. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 591-92 (App. 2008).

Equal protection of the law means the protection of equal laws. The clause requires that those similarly situated must be similarly treated. It seems also that application of the law must be equal. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection requires that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

If the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting a law or regulation that discriminates against certain classes or groups. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592-93 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College, makes a full-time teaching position a substantially different job from a part-time teaching position. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593 (App. 2008).

Regardless of the applicability of a U.S. case, the appeal of the denial of the plaintiff's equal pay claim turns on whether full-time teaching positions and part-time teaching positions are similar positions and on whether there is a rational relationship between a full-time teacher's pay and a part-time teacher's pay. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593-94 (App. 2008).

A full-time teacher's added duties, the need to forgo other employment, and long-term commitment (three years as opposed to one semester) to teaching at the College – are legitimate factors from which the court may conclude that full-time and part-time teachers are not similarly situated even though both are paid depending on their education and experience. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The appellant's assertion that she has made out a *prima facie* case of sex discrimination would hold water only if part-time and full-time teachers were similarly situated, thus allowing her to compare herself to a full-time teacher. It did not because, contrary to her assertions, full-time and part-time teachers are not similarly situated; because she has not claimed that she was paid less than a similarly-situated (part-time) male teacher; and because she was, in fact, the highest paid part-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

The pay difference between full-time and part-time teachers passes the rational relationship test because the full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College are all rational and legitimate reasons for the College to pay full-time teachers at a higher rate than part-time teachers and because it is undisputed that the College had legitimate and rational reasons to employ part-time teachers, as and when needed, rather than hiring just full-time teachers. The payment of full-time teachers at the part-time rate for excess and summer classes does not change the analysis because

those classes are beyond the duties that full-time teachers are obligated to perform. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

A plaintiff cannot show any discrimination for summer classes pay when, for summer classes, her pay was equal or higher than any other summer instructor including those classified as full-time teachers. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 594 (App. 2008).

For a part-time teacher to make out a *prima facie* case of sex discrimination she would have had to have shown that she was paid less than a male part-time teacher with the same level of education. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

When full-time teachers and part-time teachers are not similarly situated, a plaintiff does not have a factual basis for relief under the Pohnpei Wage and Hour Law when the claim is that she was paid less than male full-time teachers because she did not perform the same work as a full-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

The FSM Constitution's Declaration of Rights has two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws, and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. This is a constitutional guarantee that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

When a plaintiff comes forward with no admissible, competent evidence to show invidious discrimination, then summary judgment is appropriate. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

A plaintiff has failed to establish a prima facie case of sex discrimination in the hiring process when she was not rejected for the job, but was interviewed for the position and then hired. Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

The plaintiff's claim of invidious discrimination and that the defendant violated the FSM Constitution because the plaintiff had to fill out an employment application to be hired and while she was working for the defendant another was rehired and not required to resubmit a new job application since his resignation paperwork had not been processed, is not supported by the law and will be dismissed with prejudice. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

An employment applicant was not discriminated against when the employer chose an applicant more qualified than she. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 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).

The FSM Constitution at Article IV, Section 4, guarantees that similarly situated individuals not be treated differently due to some sort of invidious discrimination. Berman v. Pohnpei, 16 FSM R. 567, 577 (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).

When the plaintiff and her co-worker were not similarly situated because she had no prior legislative counsel experience and he did and when she was hired for and given lesser job responsibilities and assignments, she was thus not entitled to the same wages and benefits as the other. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When the plaintiff was not equally qualified and had a lower level of responsibility than the other counsel, her lower pay did not violate the Legislature Manual's equal pay provisions since she had neither equal qualifications nor levels of responsibility. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Equal protection of the law means the protection of equal laws and requires that those similarly situated must be similarly treated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact, which fact remains on appeal, that the plaintiff was not similarly situated to the Legislature's other attorneys because they had prior experience doing legal work for legislative bodies and she had none, she cannot prevail on an equal protection claim based on being hired as a temporary employee on short-term contracts although a permanent long-term position had been advertised. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

In order to establish a prima facie claim of sex discrimination in the hiring process, a plaintiff must establish that: 1) she is a member of a protected class; 2) she applied for and was qualified for a position for which her employer was seeking applicants; 3) despite her qualifications she was rejected; and 4) thereafter the position remained open and the employer continued to seek applicants with plaintiff's qualifications. If the plaintiff establishes the existence of these four elements, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

When the trial court found as fact that the defendant Legislature did meet its burden when it articulated legitimate, non-discriminatory reasons for the plaintiff's rejection – she was not similarly qualified since she did not have any prior experience as counsel to a legislative body and all the other male attorneys who were hired did, as well as a female attorney who was offered, but declined, employment, the plaintiff's equal protection contention is without merit. Berman v. Pohnpei Legislature, 17 FSM R. 339, 349 (App. 2011).

Aliens are persons protected by the equal protection clause of the FSM Constitution. Berman v. Lambert, 17 FSM R. 442, 449-50 (App. 2011).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Non-citizen does not equate to "national origin" in the Equal Protection Clause and allow non-citizens suspect class status. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

A statute establishing a hiring and promotion preference for legal residents of Pohnpei and FSM citizens, which bears a rational relationship to legitimate governmental purposes of encouraging and preserving job opportunities for legal residents, of the establishment and growth of the local work force, of combating unemployment in Pohnpei, and of training its citizens to work towards self-government, does not violate the FSM Constitution's equal protection clause. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Since selective prosecution is a defense in a criminal case, when a civil defendant asserts that it was singled out for enforcement and was the only employer being sued for unpaid health insurance premiums,

the court will read this as an equal protection claim. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538-39 (Chk. 2011).

The Constitution's Declaration of Rights contains two equal protection guarantees. Section 3 provides that a person may not be denied the equal protection of the laws and section 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

When no Article IV, section 4 class is at issue and no fundamental right is involved, the question is whether the classification is rationally related to a legitimate governmental purpose. The rational relationship test examines whether there is a reasonable justification for permitting the discrimination. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

It is entirely rational that the Chuuk Health Care Plan first sue the largest non-complying employer before suing other non-compliant employers, especially when the others are trying to bring themselves into compliance. Someone must be first. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 539 (Chk. 2011).

The FSM Constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in the FSM Const. art. IV, § 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

The rational basis standard will be applied to an analysis of a plaintiff's equal protection claims about the regulation of alcohol sales. A rational basis analysis requires statutes restricting alcohol to have a legitimate, reasonable purpose, to not be arbitrary, and the legislation carries out the purposes prescribed. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

A statute that restricts the sale of alcohol during the Christmas and New Year's holidays serves legitimate governmental purposes in the areas of the public health and welfare and the allowance of on-sale alcohol purchases during these holidays also support the operations of the hotels and cabarets who have a demand for such sales from its customers during the holidays. This legislation carries out the purposes for which the statute was amended by further regulating the sale of alcohol in a manner which promotes the State's legitimate governmental objectives. This statute regulating and restricting alcohol is within the scope of legislative authority, has a reasonable purpose, is not arbitrary, and carries out the purposes prescribed and is thus not unconstitutional. Kallop v. Pohnpei, 18 FSM R. 130, 135-36 (Pon. 2011).

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).

A state court litigant's right to equal protection is not violated because he can only get a judgment in the state court and cannot get a judgment in the FSM Supreme Court. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

Each court system, national and state, treats all persons before it equally under the law and the difference in each court system's jurisdictional requirements is not unequal treatment under the laws. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision guarantees that similarly situated individuals are not treated differently due to some sort of invidious discrimination. When a person does not argue or submit evidence to show that he is being discriminated upon as a member of a protected class, or that he is being treated differently from similarly situated individuals, his equal protection claim is unsupported. FSM v. Isaac, 21 FSM R. 370, 376-77 (Pon. 2017).

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 constitutional guarantees of due process and equal protection extend to aliens. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 n.8 (Pon. 2020).

– Excessive Fines

It is premature to challenge a statute as unconstitutional for imposing excessive fines until a fine has been imposed. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 126 (Pon. 1995).

– Ex Post Facto Laws

While every ex post facto law must necessarily be retrospective not every retrospective law is an ex post facto law. An ex post facto law is one which imposes punishment for past conduct, lawful at the time

it was engaged in. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 266-67 (Chk. S. Ct. Tr. 1993).

Legislation is not an ex post facto law where the source of the legislative concern can be thought to be the activity or status from which the individual is barred, even though it may bear harshly upon one affected, but the contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 268-69 (Chk. S. Ct. Tr. 1993).

A provision barring those convicted of a felony, even if pardoned, from membership in the legislature is concerned with the qualifications of legislative membership, and is not just for the purpose of punishing felons and those pardoned of a felony which would violate the constitutional ban on ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 269-71 (Chk. S. Ct. Tr. 1993).

Regulations imposing civil disqualifications for past criminal conduct are not punishment barred by the constitutional ban against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 270-71 (Chk. S. Ct. Tr. 1993).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The concept of ex post facto laws is limited to legislation which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the laws; or 4) alters the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on ex post facto law applies to criminal acts only. This means retroactive noncriminal laws may be valid. Robert v. Mori, 6 FSM R. 394, 400 (App. 1994).

The mark of an ex post facto law is the imposition of punishment for past acts. The question is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Since the legislative aim of a statute making ineligible for election to Congress those persons convicted of a felony in a Trust Territory court was not to punish persons for their past conduct it is a regulation of a present situation concerned solely with the proper qualifications for members of Congress. As such it is a reasonable means for achieving a legitimate governmental purpose. It is therefore not unconstitutional as an ex post facto law. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

An ex post facto decision is one that imposes punishment for past conduct, lawful at the time it was engaged in. The concept of ex post facto laws is limited to the following: 1) making criminal and punishable an act innocent when done; 2) aggravating a crime, or making it greater than it was when committed; 3) increasing the punishment for a crime and applying the increase to crimes committed before the enactment of the laws; or 4) altering the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

There was no ex post facto violation in the appellants' conviction for conspiring to violate Section 529 (2001) when the conduct underlying violation of Section 529 was unlawful as of 1982 under the substantively identical Section 548 which was made law then, the appellants cannot maintain that their conduct in the late 1990's underlying the Section 529 conspiracy charge was lawful when they engaged in it; when, since Section 529's punishment provisions are identical to those of Section 548, conviction under Section 529 does not aggravate the crime to make it greater than it was when committed and does not increase the punishment; and when, since the statutes are substantively identical, the same evidence would be sufficient for conviction under both. Engichy v. FSM, 15 FSM R. 546, 555 (App. 2008).

Ex post facto laws are laws passed after the occurrence of a fact or the commission of an act, which thereby changes the legal consequences of the fact or act. An *ex post facto* law seeks to impose punishment on individuals for past acts. Kallop v. Pohnpei, 18 FSM R. 130, 133 (Pon. 2011).

– Foreign and Interstate Commerce

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 47 (Pon. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 380 (Pon. 1990).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

The national government has the express authority to regulate international commerce. International commerce is also a power of such an indisputably national character as to be beyond them power of a state to control because the customs and immigration borders of the country are controlled by agencies of the national government. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581-82 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

When trochus was harvested to be sold for the export market and pepper was grown and processed for the export trade, that is foreign commerce. That Pohnpei arranged its affairs so that its purchases and sales were all in state does not take it out of the stream of foreign commerce. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15-16 (App. 2006).

The national government is expressly delegated the power to regulate foreign and interstate commerce. Title 32 is a valid exercise of that power and the anticompetitive practices statute in Title 32 creates a statutory tort. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Congress has the power to create institutions that engage in the activity that Congress has the power to regulate. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Freedom of Expression

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM R. 239, 247-48 (Pon. 1983).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct the employee's termination should be upheld. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

It is not a violation of a person's free speech rights to be arrested when he was attempting to interfere with the arrest of his cousin, when he was drunk at the time, and when he was disturbing the peace. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The freedom to communicate is the rule and restraint is the exception. Censorship, a form of prior restraint, is the most suspect punishment in a free society; ideas do not even get to the marketplace to compete for recognition and acceptance. Censorship thus runs counter to the freedom of speech and press. FSM v. Moses, 9 FSM R. 139, 146 n.2 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

While no law may deny or impair freedom of expression, traditions are also protected under the FSM Constitution. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

No law may deny or impair freedom of expression, except by a statute which protects tradition. If a statute is one which protects tradition, it may deny or impair the fundamental right of freedom of expression provided by the FSM and Kosrae Constitutions. If it is not a statute which protects tradition, then the statute may not impair the fundamental right of freedom of expression. Kosrae v. Waguk, 11 FSM R. 388, 390-91 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Flyers and newspaper advertisements may be interpreted as "press" for purposes of constitutional freedom of expression. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

Commercial speech is expression related solely to the economic interests of the speaker and its audience, or speech which does no more than propose a commercial transaction. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614 (Pon. 2003).

No guidance is found in the Journal of the Constitutional Convention as to the specific protection the FSM Constitution's framers sought to give commercial speech, but it did recognize that some forms of speech deserve less protection than others. Yang v. Western Sales Trading Co., 11 FSM R. 607, 614-15 (Pon. 2003).

Commercial expression serves two different functions – it serves the economic interests of the speaker, and also assists consumers and furthers the societal interest in dissemination of information. It may be constitutionally protected from unwarranted governmental restriction; however, there are common sense distinctions between commercial speech, which proposes a commercial transaction, and other varieties of speech. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

Commercial speech deserves less constitutional protection than other varieties of speech. Commercial speech's societal benefits are directly related to the informational function; thus, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about a lawful activity. The government should be permitted to restrict commercial forms of communication more likely to deceive the public than to inform it. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court approaches arguments as to the unconstitutionality of any prior restraint on the right to free speech as follows: first, the distinction is drawn between those portions of the publications that legitimately provide consumers with information and those portions which are solely related to proposing a commercial transaction. The court accords the first category constitutional protection as it approximates pure speech. As for the commercial speech contained within the publications, it would not be afforded constitutional protection unless the court found that the speech concerned a lawful activity and was not misleading. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM R. 607, 615 (Pon. 2003).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM R. 607, 618 (Pon. 2003).

The right of citizens to express their views, including views critical of public officials, is fundamental to development of a healthy political system. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312 (App. 2007).

When a legislature employee aired his opinion about a number of issues concerning the Speaker in a letter that was submitted directly to the Speaker, with copies to the Governor and the Pohnpei Supreme Court Chief Justice, it did not constitute an employee grievance. When the employee's assertion that he was notifying the Speaker of his intention to seek redress over his missing raise was false because an earlier letter previously notified the Speaker about the initiation of such legal proceedings; and when the employee appears to have sent the letter in pursuit of matters of a purely personal interest and the letter's overall tone was one of a personal grievance about his pay raise and his cancelled travel plans to events in Guam and Florida, which other Legislature employees had attended, the overriding factor is the context in which the statements were made: in pursuit of matters of the employee's personal importance and not as protected free speech. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 312-13 (App. 2007).

In evaluating a government employee's speech, the issue is not whether the speaker's statements were true or false, but instead whether the speech is made in the context of a public citizen making statements about issues of public importance, or as an employee making statements about matters of personal interest. Thus, courts must begin by considering whether the expressions in question were made by the speaker as a public citizen. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 313 (App. 2007).

A state employee's speech that concerns genuine public issues would be protected, but his speech that relates to items of personal importance to the employee would not necessarily be protected. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 314 (App. 2007).

Considerations of constitutional law and free speech sometimes apply to defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Although falsity is included in the FSM's definition of defamation, falsity is not a traditional element of a plaintiff's prima facie case; rather, truth is an affirmative defense. Even so, a court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Free speech is not a limitless right. One limitation comes from defamation law. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

Considerations of constitutional law and free speech sometimes apply in defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

Free speech rights under the Declaration of Rights protection of "freedom of expression" should cover social media communications. Apostol v. Maniquiz, 22 FSM R. 146, 149 & n.2 (Chk. 2019).

"Freedom of expression" encompasses freedom of speech, freedom of the press, and the freedom to communicate. Apostol v. Maniquiz, 22 FSM R. 146, 149 n.2 (Chk. 2019).

– Fundamental Rights

Waiver of a fundamental right may not be presumed in ambiguous circumstances. FSM v. Edward, 3 FSM R. 224, 234 (Pon. 1987).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM R. 266, 281-82 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself;

if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (Pon. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A fundamental right is some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental and examples of which are the freedom of association, the right to vote, the right to travel, rights associated with certain criminal proceedings, and the right to privacy. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

Equal protection forbids only invidious discrimination. Where relevant differences exist between classes, different treatment by the state is permissible. However, any statute that classifies and affords different treatment is subject to the same tests as those under substantive due process: 1) Does the legislature have power to enact the statute that classifies? 2) Does the classification bear a rational relationship to the legislative goal? The classification is presumed to be valid and the burden of proving that the statute is without a rational relationship to the legislative objective is on the challenger of the classification. 3) Where fundamental rights are involved, the classification constitutes a suspect criteria. As such, the burden of proving that the classification bears a close rational relationship to some compelling governmental interests shifts to the government. Fundamental rights are presumed to be absolute until the government proves a compelling governmental interest to curtail or restrain them. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

The court should be wary of requests that it identify as fundamental any rights beyond those specified in the declaration of rights. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Employment is not listed as a fundamental right in the Declaration of Rights although a case has referred to "employment opportunity" as a "liberty interest." But when the interest in contention is employment pay not the opportunity for employment, being paid a lower rate than another involves a fundamental right if the reason for the lower pay is the employee's sex, race, ancestry, national origin, language, or social status. Being paid at a lower rate for some other reason does not involve a fundamental right. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 592 (App. 2008).

Although an employment opportunity is a liberty interest protected by due process, the right to governmental employment in Pohnpei is not a constitutionally-protected fundamental right, requiring invoking a strict scrutiny test. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Equal protection analysis within the FSM has adopted a two-tiered test. The first tier is a rational basis test. Under this test a law will be upheld if it is rationally related to a state interest. Under the second tier, laws that involve a "suspect" class of persons or touch on a "fundamental interest" are subject to strict scrutiny and are struck down unless justified by a compelling state interest. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

Employment is not listed as a fundamental right in the Declaration of Rights and the court should be wary of requests that it identify as fundamental any rights beyond those specified in the Declaration of Rights. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

– Imprisonment for Debt

The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

The prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

A debtor who knows that he is under a court order to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. Such a situation amounts to being "tainted by fraud" and is within the exceptions to the prohibition on imprisonment for debt. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382-83 (App. 2003).

– Indefinite Land Use Agreements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where no indefinite land use agreement existed when the Constitution took effect there was no agreement that had to have been renegotiated by 1984. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

All indefinite land use agreements are void after July 12, 1984, as being in violation of the FSM Constitution. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Under the original version of Article XIII, section 5 of the FSM Constitution, FSM governments were barred from obtaining an agreement for the use of land for an indefinite term and that could have made a land purchase agreement unconstitutional because of a reversionary clause returning the land to the original land owner or successor at the end of an indefinite term of airport use, but, when that provision was amended in 1991 so that only land lease agreements for an indefinite term were prohibited, and that constitutional amendment was effective before the subject land purchase agreement was executed, Article XIII, section 5 does not prohibit the Land Purchase Agreement because it is not a lease. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

When the Trust Territory leased Unupuku in 1956 and had indefinite land use rights under the lease, but did not claim to own Unupuku, but indefinite land use agreements were abolished by Article XIII, section 5 of the FSM Constitution and became void on July 12, 1984, five years after the FSM Constitution's effective date, and when the state executed a fifteen-year lease for Unupuku in 1984 and it did not claim to own Unupuku, in any suit claiming title to Unupuku, the state was not the party to sue since it did not claim title to Unupuku. Unupuku's titleholders were. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

– Interpretation

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos. 1982).

Because the Constitution of the Federated States of Micronesia has drawn upon numerous concepts established in the Constitution of the United States, interpretations of the United States Constitution, as of 1978 when the Constitution was ratified by plebiscite, are pertinent to determining the meaning of particular provisions in the FSM Constitution. To the extent that the FSM clearly patterned upon the United States Constitution, the reasonable expectation of the framers would be that the words of the FSM Constitution would have substantially the effect those same words had been given in the United States Constitution as of the times that the convention was acting, or when the ratifying vote occurred. Lonno v. Trust Territory (I), 1 FSM R. 53, 69-70 (Kos. 1982).

Decisions of the Trust Territory courts may be a useful source of guidance in determining the meaning of particular provisions within the Constitution. The framers were working against the background of legal concepts recognized and applied by the Trust Territory High Court and may have

been guided by those interpretations in selecting or rejecting certain provisions. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

The FSM Supreme Court may look to the law of other nations, especially other nations of the Pacific community, to determine whether approaches employed there may prove useful in determining the meaning of particular provisions within the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Analysis of the Constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

When the words of a constitutional provision are not conclusive as to its meaning, the next step in determining the intent of the framers is to review the Journal of the Micronesian Constitutional Convention to locate any discussion in the convention about the provision. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

If doubt as to the meaning of a constitutional provision still remains after careful consideration of the language and constitutional history, the court should proceed to other sources for assistance. These include interpretations of similar language in the United States Constitution, decisions of the Trust Territory High Court, generally held notions of basic justice within the international community, and consideration of the law of other nations, especially others within the Pacific community. FSM v. Tipen, 1 FSM R. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM R. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

The framers of the Federated States of Micronesia Constitution drew upon the United States Constitution and it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the United States Supreme Court. Jonas v. Trial Division, 1 FSM R. 322, 327 n.1 (App. 1983).

An analysis of constitutional grants of power must start with the constitutional language itself. Suldan v. FSM (II), 1 FSM R. 339, 342 (Pon. 1983).

The similarities of the FSM and the United States Constitutions mandate that the FSM Supreme Court, in attempting to determine its role under the FSM Constitution, will give serious consideration to United States constitutional analysis at the time of the Micronesian Constitutional Convention. Suldan v. FSM (II), 1 FSM R. 339, 345 (Pon. 1983).

If the words of the Constitution are ambiguous or doubtful, it is a court's duty to seek out the intention of the framers. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

A legitimate method for determining the meaning of a constitution is to trace the language to its source. When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution of the FSM. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 394 (Pon. 1984).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the Federated States of Micronesia Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM R. 503, 523 (App. 1984).

Where the framers of the FSM Constitution have borrowed phrases from the Constitution of the United States for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the Supreme Court of the United States. Tammow v. FSM, 2 FSM R. 53, 56-57 (App. 1985).

Interpretative efforts for a clause in the FSM Constitution which has no counterpart in the United States Constitution must begin with recognition that such a clause presumably reflects a conscious effort by the framers to select a road other than that paved by the United States Constitution. The original focus must be on the language of the clause. If the language is inconclusive the tentative conclusion may

be tested against the journals of the Micronesian Constitutional Convention and the historical background against which the clause was adopted. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Interpretations of the FSM Constitution which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

General principles gleaned from an entire constitution and constitutional history may not be employed to defeat the clear meaning of an individual constitutional clause. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Though the words used in article XI, section 6 of the FSM Constitution, including the case or dispute requirements, are based on the similar case and controversy provisions set out in article III of the United States Constitution, courts within the FSM are not to consider themselves bound by the details and minute points of decisions of United States courts attempting to ferret out the precise meaning of article III. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Many provisions of this Constitution are derived from the United States Constitution and the framers intended that interpretation of the words adopted would be influenced by United States decisions in existence when this Constitution was adopted in October 1975 and ratified on July 12, 1978. Yet the framers also surely intended that courts here would not place undue importance on decisions of United States courts but would employ the words and concepts used in the United States Constitution to develop a jurisprudence appropriate and applicable to the circumstances of the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM R. 95, 98 (Pon. 1985).

Constitutional interpretation must start and end with the words of the provision when the words themselves plainly and unmistakably provide the answer to the issue posed. The court may not look to constitutional history nor to United States interpretations of similar constitutional language in this circumstance. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126-27 (Pon. 1985).

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States

decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM R. 189, 193-94 (Kos. 1986).

Differences in the language employed in parallel provisions of the FSM and United States Constitutions presumably reflect a conscious effort by the framers of the FSM Constitution to select a road other than that paved by the United States Constitution. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

In determining whether constitutional language is amenable to only one possible interpretation, courts should consider the words in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 258 (Pon. 1987).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

In interpreting the Constitution, each provision should be interpreted against the background of all other provisions in the Constitution, and an effort should be made to reconcile all provisions so that none is deprived of meaning. Bank of Guam v. Semes, 3 FSM R. 370, 378 (Pon. 1988).

Courts should interpret the national Constitution in such a manner that each provision is given effect. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

Because the jurisdiction provisions of the FSM Constitution are substantially similar to those of the United States but the words themselves provide no definite interpretation and no party has pointed either to constitutional history or to other matters, such as custom or tradition, calling for a particular interpretation or for departure from the accepted meaning in the United States, it is appropriate to look to United States precedents for possible guidance in determining what the framers intended in adopting the provisions that now appear in the Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 41 (Pon. 1989).

Where the language of the FSM Constitution has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, United States constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Paul v. Celestine, 4 FSM R. 205, 208 (App. 1990).

Analysis of Constitutional issues must begin with the words of the Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 325 (App. 1990).

Consideration of the general plan of the Constitution and the institutions created thereunder may be helpful in determining the proper interpretation of specific language within the FSM Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 326 (App. 1990).

When the meaning of the words in the FSM Constitution are not self-evident and it is apparent the words have been drawn from or are patterned upon language in the Constitution of the United States or of some other jurisdiction, the Supreme Court of the FSM may look to decisions of courts in that other jurisdiction for assistance in discerning the appropriate meaning of the words in the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

The decisions of United States courts are not binding upon the FSM Supreme Court as to the meaning of the FSM Constitution even when the words of the FSM Constitution plainly are based upon comparable language in the United States Constitution, and the FSM Supreme Court will not accept a United States interpretation which 1) was shaped by historical factors not relevant to the FSM; 2) was widely and persuasively criticized by commentators in the United States; and 3) was not specifically recognized or even alluded to by the framers of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 371 (App. 1990).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM R. 179, 196-97 (Pon. 1991).

Constitutional analysis always starts with the words of the Constitution. Where the wording is inconclusive and where the wording is unique to the FSM Constitution, then the court should look to the journals of the Constitutional Convention and the historical background at the time the clause was adopted for guidance. But when there is a conflict with the language of the Constitution, then the actual wording of the Constitution prevails. Nena v. Kosrae, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

The term "concurrent" in article XI, section 6(c) of the FSM Constitution has the same meaning as in section 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in section 6(c) than in section 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

Where the constitutional language is inconclusive or does not provide an unmistakable answer courts may look to the journal of the Constitutional Convention for assistance in determining the meaning of constitutional words. Robert v. Mori, 6 FSM R. 394, 397 (App. 1994).

Some weight may be given as well to the early Congresses' understanding of constitutional provisions given the continuity of elected representation in the early Congresses. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Where distinctions exist between the Constitution of the Federated States of Micronesia and the United States Constitution or other foreign authorities, court must not hesitate to depart from foreign precedent and develop its own body of law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

If a matter may properly be resolved on statutory grounds without reaching potential constitutional issues, then the court should do so. FSM v. George, 6 FSM R. 626, 628 (Kos. 1994).

Analysis of constitutional issues must begin with the words of the Constitution, and where the framers of the FSM Constitution drew upon the Constitution of the United States it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the Supreme Court of the United States. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 47 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the national courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

The primary source available to courts when engaging in constitutional interpretation are the words of the constitution itself, and, if those are capable of more than one meaning, then the legislative history. Assuming that these two sources, taken together, are dispositive of the issue in question, a court may not look to any other source. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Courts are to interpret constitutions so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tafunsak v. Kosrae, 7 FSM R. 344, 347 & n.4 (App. 1995).

FSM courts may look for guidance to decisions of United States courts construing words of the United States Constitution which are similar to those in the Constitution of the Federated States of Micronesia, but FSM courts need not follow them in areas where United States constitutional law has been particularly unsettled or where the decision relies on specific and unique historical factors that do not exist here. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459-60 (App. 1996).

When the language of the Constitution is not conclusive as to the issue presented, it is proper to refer to the constitutional convention journal for the history of the provision. If the journal does not address the point, a court may next consult cases from the United States if the phrase in the U.S. Constitution suggests that the FSM borrowed the term, and the court can infer that the framers intended that the meaning here be given the same meaning as it was given in U.S. courts. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463-64 (App. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556-57 (Chk. 1996).

A state court is competent to rule on FSM Constitution, but should avoid unnecessary adjudication of the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 28 (App. 1997).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Where the words are clear and permit only one possible result, the court should go no further. Only where the words of the Constitution are not clear is it necessary to consult other sources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 362-63 (Pon. 1998).

A court should consider all provisions of the Constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363, 368, 386 (Pon. 1998).

If a court finds that the words of the Constitution are not clear or do not permit only one possible result, the court should next consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting that language. If these two sources are dispositive, the court may not look to any other source. If the Constitution's language considered together with the legislative history is not dispositive, the court should look to interpretation of comparable language in other constitutions and to custom and tradition for guidance. Given the continuity of elected representation in the early FSM Congresses, some weight may be given as well to early Congresses' understanding of constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 363 (Pon. 1998).

The framers intended that the constitutional language delegating governmental functions to the FSM national government be strictly and narrowly construed and not used to excessively and unduly expand the power of the central government, but they did not intend that the general grant of power be ignored,

with the effect of denying to the central government the power necessary to deal with problems which are national in scope. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369 (Pon. 1998).

The Constitution must be interpreted so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation, and are greatly disfavored. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Because of the continuity of representation in the early Congresses of the FSM, courts can give some weight to the early Congresses' understanding of Constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 n.27 (Pon. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

When the court has analyzed the present meaning of the Constitution by recognized judicial standards of constitutional interpretation as long as the present language remains the court's conclusions carry full force and effect. Chuuk v. Secretary of Finance, 9 FSM R. 73, 75 (Pon. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 n.2 (App. 2000).

What is important is not how the states imagine it might have been in Trust Territory times, but what presently exists under the provisions of the Constitution, which the people of all four states ratified. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432-33 (App. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

A court can neither read into the Constitution nor rewrite the Constitution to contain a provision that is not there. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

In interpreting the Constitution, a court looks first to the language and words of the Constitution. When that language is plain and unambiguous, a court need not look any further. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

In the usual case, a court will not decide a question on a constitutional ground if it may be resolved on a statutory or other basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When the tax exemption issue is implicitly a constitutional one because the statute, to the extent viewed as seeking to impose a state tax upon the national government, goes to the constitutional relationship between the state and national governments and when as between the exemption issue and the interstate commerce restriction issue, which is explicitly constitutional in character, the determination of one makes the other moot, and when if only the tax exemption issue were addressed it could resolve the dispute between the parties but would leave in place an injunction precluding all collection of the tax as unconstitutional, the court must decide the constitutional tax and commerce question in order to

accord the appellant a meaningful remedy. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM R. 618, 621 n.1 (Chk. 2002).

In resolving a constitutional question, first the court must look at plain meaning of words of the Constitution. If a particular provision is not clear, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are constitutional provisions similar to provisions in other countries' constitutions, the court may look to other countries' case law for guidance, but is not bound. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

Where the framers of the FSM Constitution borrowed phrases from the United States Constitution for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the United States Supreme Court. Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

In interpreting a constitutional provision, a court must initially analyze the constitution's actual words. If those words are clear and permit only one possible result, then the court should go no further. But if a constitutional provision is not clear and does not permit only one possible result, a court should next consult the constitutional convention journal to ascertain the framers' intent in drafting the language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380-81 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and the Constitution's adoption. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

Unnecessary constitutional adjudication is to be avoided. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

When analyzing provisions of the FSM Constitution, a court must look first to the Constitution's actual words. When the words are clear and permit only one possible result, the court should go no further. After reviewing the Constitution's words, if the court finds that the words are not clear or do not permit only one possible result, the court should next consult is the Journal of the Constitutional Convention to ascertain the framers' intent in drafting that language. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. When the FSM Constitution's language has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special

relevance in determining the meaning of similar constitutional language here. But in evaluating the reasoning of other courts, the court emphasizes that it must always independently consider the suitability of that reasoning for the FSM. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution because a phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327-28 (App. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM R. 405, 409 (Chk. 2004).

The nation's laws are presumed to be constitutional. A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569, 572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In the important process of construing the nation's formative document, we must first pay heed to the language of the Constitution itself. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

When the Constitution's words themselves are not determinative of a question, the court may look to the Micronesian Constitutional Convention journal to locate any discussion about the provision in question. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

It is plain from the framers' discussions at the time of the Constitution's creation that in order to insure the judiciary's independence, there should be only one removal process for justices, and that that process should be the one specified in the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

The court cannot amend the Constitution by reading into it language that does not appear in it. To do so would be to amend the Constitution by judicial fiat, a course of action not only plainly inimical to Article XIV, Section 1 of the Constitution, but one upon which the court is constitutionally forbidden from embarking. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149-50 (App. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

When the funds garnished came from tax revenues already credited to the State of Chuuk and held by the FSM pending disbursement, and these are funds credited to the states in accordance with Title 54, Section 805, and are automatically paid into the state government treasury by statute and are simply held by the FSM national government, the state's argument that this money was not withdrawn from the national treasury "by law," is therefore incorrect. Chuuk v. Davis, 13 FSM R. 178, 184-85 (App. 2005).

The similarities of the FSM and the U.S. Constitutions mandate that the court give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. Wainit, 13 FSM R. 433, 444-45 (Chk. 2005).

When there are no reported decisions by FSM courts which discuss whether a person, who has been stopped for suspected driving under the influence, must be provided his or her Miranda rights prior to the administration of field sobriety tests, the court may look to United States law for guidance. Kosrae v. Phillip, 13 FSM R. 449, 452 (Kos. S. Ct. Tr. 2005).

Once a plaintiff's claim fails on its statutory grounds then the court should have considered either the plaintiff's common law ground or its constitutional grounds. On the general principle that constitutional adjudication should be avoided unless necessary, the trial court should first consider any non-constitutional grounds that might resolve the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25-26 (App. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and seizure protections in the FSM any further. It was intended to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

U.S. authority may be consulted to understand the meaning of a Declaration of Rights provision patterned after a U.S. Bill of Rights provision since the provisions in the Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. Where the Constitution's framers drew upon the U.S. Constitution, it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Fritz, 14 FSM R. 548, 552 n.1 (Chk. 2007).

When the language in an FSM rule or law is nearly identical to a United States counterpart, the court may look to the courts of the United States for guidance in interpreting the rule or law and may look to court decisions from the United States to assist in the interpretation of the double jeopardy clause set forth in the Declaration of Rights in the FSM Constitution, as that clause was drawn from the Bill of Rights of the United States Constitution. FSM v. Zhang Xiaohui, 14 FSM R. 602, 615 (Pon. 2007).

When no reported FSM case has dealt with alleged discrimination in an academic setting, the court may consider cases from other jurisdictions in the common law tradition. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 81 (Pon. 2007).

When the appellate court has not had previous occasion to consider the constitutionality of a DUI statute, the court may consider cases from other jurisdictions in the common law tradition. Phillip v. Kosrae, 15 FSM R. 116, 119 (App. 2007).

In determining the double jeopardy clause's scope and meaning the court first looks to the language of the Constitution itself. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. The Double Jeopardy Clause, like most provisions of the Declaration of Rights, was drawn from the United States Constitution's Bill of Rights. Thus, United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's Double Jeopardy Clause. FSM v. Louis, 15 FSM R. 348, 354 (Pon. 2007).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than begin with a review of other courts' decisions, when the language in the FSM Constitution and the U.S. Constitution is similar or identical, it is appropriate to look to United States constitutional law and its courts's interpretations, especially those interpretations existing at the time of

the Micronesian Constitutional Convention, as a guide to the intended scope of the FSM Constitution's words. FSM v. Sam, 15 FSM R. 491, 493 n.1 (Chk. 2008).

The FSM Constitution is based in great part on the U.S. Constitution, but there are significant differences between the two, and where such differences exist, they presumably represent a conscious effort by the framers to select a road other than that paved by the United States Constitution. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM Constitution's separation-of-powers structure is derived from that in the U.S. Constitution. The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis, especially at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 n.1 (Pon. 2009).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Although it may look to U.S. constitutional decisions for guidance, the FSM Supreme Court may not simply accept the U.S. court interpretations, but must instead independently consider whether U.S. court rulings are appropriate for application within the FSM. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

Although the court must first look to FSM sources of law to establish legal requirements in criminal cases rather than start with a review of other courts' cases, when an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning since it may be presumed that the borrowed phrases were intended to have the same meaning given to them by the U.S. Supreme Court. FSM v. Kool, 18 FSM R. 291, 294 n.2 (Chk. 2012).

In resolving a Constitutional question, the Chuuk State Supreme Court must first look at plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are provisions in the FSM Constitution similar to provisions in other countries' constitutions, the court may look to case law of other countries for guidance, but is not bound. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

When it is an issue of first impression, U.S. court decisions may be used for guidance. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

While the court must first look to FSM sources of law to rather than begin with a review of other courts' decisions, when a FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision and when there is no FSM case law on point, United States authority may be consulted to understand its meaning. Kon v. Chuuk, 19 FSM R. 463, 466 n.1 (Chk. 2014).

A constitutional provision that requires things to be done without prescribing the result that will follow if those things are not done is directory in character. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

Article XII, Section 3(b)'s specific language merely signifies those entities which come within the penumbra of duties/responsibilities incumbent upon the Office of the Public Auditor. By the use of the phrase "every branch . . . of the national government," it is readily apparent the framers were listing a series of entities that would come within the ambit of the Office of the Public Auditor's duties and responsibilities. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514 (App. 2016).

The FSM Supreme Court's exclusive jurisdiction over cases in which the national government is a party is not paralleled in the United States, and such differences presumably reflect a conscious effort by the framers to select a road other than that paved by the United States Constitution. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

A constitutional provision cannot be unconstitutional under the constitution it is a part of. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Since unnecessary constitutional adjudication is to be avoided, if a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

The general principle is that constitutional adjudication should be avoided unless necessary, so the trial court should first consider any non-constitutional grounds that might resolve the issue. Chuuk v. Weno Municipality, 20 FSM R. 582, 584 (Chk. 2016).

If a matter may properly be resolved without reaching potential constitutional issues, then the court should do so, since unnecessary constitutional adjudication is to be avoided. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

When the language of the FSM Constitution has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 n.10 (App. 2017).

The FSM Constitution's due process clause is derived from the U.S. Constitution and thus U.S. cases may be consulted for guidance in interpretation, emphasizing those cases in effect at the times of the FSM Constitution's framing (1975) and the ratification (1978). Wolphagen v. FSM, 22 FSM R. 96, 102 n.1 (App. 2018).

Constitutional adjudication should be avoided unless necessary. The trial court should first consider any non-constitutional grounds that might resolve the issue. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon. 2019).

The court will not address the plaintiff's claims that the defendants directly violated three FSM Constitution provisions when the only necessary Constitutional inquiry is whether the national government exercised its power appropriately when it enacted a particular statute because, when the court concluded that that statute was lawfully enacted, the plaintiff's claim that the defendants violated a national statute was sufficient to resolve the parties' dispute. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328-29 (Pon. 2019).

In rendering a decision, the court must first consult and apply FSM legal sources. In resolving a Constitutional question, first the court must look at the plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should ascertain the drafters' intent by examining the Constitutional Convention's records and the reasons expressed for including that particular Constitutional provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

A constitutional provision that requires things to be done without prescribing the result that will follow if those things are not done is directory in character. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

– Interpretation – Whether Self-Executing

Jurisdictional grants of power to the national courts in Article XI, § 6 appear to be self-executing, calling for no action by Congress. Since most U.S. Constitution jurisdictional provisions are not self-executing, determinations of U.S. courts' jurisdiction are typically based on statutory construction rather than constitutional interpretation, as in the FSM. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 n.5 (App. 2016).

In light of the self-executing grants of jurisdiction embodied within the FSM Constitution, the United States decisions, which address the underlying congressional intent, provide little guidance, in terms of analysis of the Article XI, Section 6(b) "arising under" language, against the backdrop of a constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

Article III, sections 1 and 2 of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

A constitutional provision is self-executing when no legislation is required to bring it into effect and when there is no indication that legislation is contemplated in order to render it operative. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

Constitutional provisions are self-executing if they supply a sufficient rule for their implementation, or when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

While a self-executing provision does not require any legislation to render it operative, minor details may be left for the legislature without impairing the constitutional provision's self-executing nature. Hartmann v. Department of Justice, 21 FSM R. 468, 475 (Chk. 2018).

That a right granted, or duty imposed, by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent that provision from being self-executing. Hartmann v. Department of Justice, 21 FSM R. 468, 475-76 (Chk. 2018).

A constitutional provision's self-executing character does not necessarily preclude legislation for the better protection of the right secured or legislation in furtherance of the provision's purposes, or of its enforcement. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Constitutional provisions are not self-executing if they merely indicate a line of policy or principle, without supplying the means by which such policy or principles are to be carried into effect, or if the language of the constitution is directed to the legislature, or if it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Whether a constitutional provision is self-executing is ultimately a question of the intention of the constitution's framers, and, in order to determine the intent, the general rule is that courts will consider the language used, the objects to be accomplished by the provision, and the surrounding circumstances. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Constitutional provisions are presumed to be self-executing and are construed as such, rather than as requiring further legislation, unless the contrary clearly appears. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

A constitutional provision is self-executing insofar as it is susceptible of execution without supplemental legislation. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Where a constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provision. In short, if complete in itself, it executes itself. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Supplemental legislation, and any lack of regulations promulgated thereunder, cannot supplant the FSM Constitution's clear mandate. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Article III, section 3 of the FSM Constitution is self-executing in that it can be given effect without the aid of legislation and there is nothing to indicate that legislation is intended to make it operative. Hartmann v. Department of Justice, 21 FSM R. 468, 476-77 (Chk. 2018).

Not all constitutional provisions are self-executing. A constitutional provision is self-executing when no legislation is required to bring it into effect and when there is no indication that legislation is contemplated in order to render it operative. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

– Involuntary Servitude

Slavery and involuntary servitude are prohibited except to punish crime. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

While the Constitution's prohibition of slavery and involuntary servitude may have had its source in the Trust Territory Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 384 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

The determination of what constitutes 'involuntary servitude' or what is regarded as "badges of slavery" is to be made in the context of well established Micronesian customs. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an obligation to that person is satisfied. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

When a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are unsatisfactory or to accept other employment, none of the aspects of "involuntary servitude" are present. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 385 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 386 (App. 2003).

"Practices similar to slavery" include forced marriage, and a victim's repeated sexual exploitation by the same person is something akin to a "forced marriage" without the status of being a spouse. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

Under 11 F.S.M.C. 612, "exploitation" includes slavery and practices similar to slavery, and practices similar to slavery include debt bondage, serfdom, and forced marriage. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

Since, under the constitutional provision barring slavery, Congress clearly has the authority to legislate in the area of human trafficking, the FSM Supreme Court has subject matter jurisdiction over a criminal case whose charges are all under the Trafficking in Persons Act and allege exploitation. FSM v. Shiro, 21 FSM R. 331, 333 (Chk. 2017).

– Judicial Guidance Clause

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM R. 53, 69 n.11 (Kos. 1982).

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

The FSM Supreme Court can and should consider decisions and reasoning of courts in the United States and other jurisdictions, including the Trust Territory courts, in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM R. 209, 212-13 (App. 1982).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, § 11, which identifies as the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Under the FSM Constitution's Judicial Guidance Provision, FSM Const. art. XI, § 11, FSM Supreme Court decisions are to be consistent with the "social and geographical configuration of Micronesia." Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

The Constitution's judicial guidance clause cautions against simply adopting previous interpretations of other jurisdictions without careful analysis of its application to the circumstances of the Federated States of Micronesia. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 112 (Pon. 1985).

Common law decisions of the United States are an appropriate source of guidance for this court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the Federated States of Micronesia. Review of decisions of courts of the United States, and any other jurisdictions, must proceed however against the background of pertinent aspects of Micronesian society and culture. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 149 (Pon. 1985).

The judicial guidance clause, FSM Const. art. XI, § 11, is intended to insure, among other things, that this court will not simply accept decisions of the Trust Territory High Court without independent analysis. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

The judicial guidance clause implies a requirement that courts consult the values of the people in finding principles of law for this new nation, and the fact that all state legislatures in the Federated States of Micronesia, and the Congress, have enacted Judiciary Acts adopting the Code of Judicial Conduct as the standard for judicial officials and authorizing departures from those standards only to impose tighter standards, suggests that courts should rely heavily on those standards in locating minimal due process protections against biased decision-making in judicial proceedings within the Federated States of Micronesia. Etscheit v. Santos, 5 FSM R. 35, 38-39 (App. 1991).

The judicial guidance clause, article XI, section 11 of the Constitution, requires that in searching for legal principles to serve the Federated States of Micronesia, courts must first look to sources of law and circumstances here within the Federated States of Micronesia rather than begin with a review of cases decided by other courts. Etscheit v. Santos, 5 FSM R. 35, 38 (App. 1991).

State and national legislation may be useful as a means of ascertaining Micronesian values in rendering decisions pursuant to the judicial guidance clause, particularly when more than one legislative body in the FSM has independently adopted similar law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Article XI, section 11 of the FSM Constitution mandates that the court look first to Micronesian sources of law – which includes the FSM Code and rules of the court – in reaching decisions. Alfons v. FSM, 5 FSM R. 402, 404-05 (App. 1992).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

A court must consult and apply sources of law in the FSM prior to rendering a decision, and would resort to local customary law before considering the common law of other nations. Ladore v. U Corp., 7 FSM R. 296, 299 (Pon. 1995).

The Judicial Guidance Clause requires that courts utilize the following analytic method. First, if a constitutional provision bears upon an issue, that provision will prevail over any other source of law. Second, any applicable Micronesian custom or tradition must be considered, and the court's decision must be consistent therewith. If there is no directly applicable constitutional provision, or custom or tradition, or if these sources are insufficient to resolve all issues in the case, then the court may look to the law of other nations. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

The FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering suitability of that reasoning for the FSM. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

The judicial guidance clause requires that, in searching for legal principles to serve the FSM, courts must first look to sources of law and circumstances here within the FSM rather than begin with a review of cases decided by other courts. Panuelo v. Amayo, 10 FSM R. 558, 563 (App. 2002).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496-97 (Kos. 2003).

The FSM Constitution requires that court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. Yang v. Western Sales Trading Co., 11 FSM R. 607, 613 (Pon. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM R. 172, 180 (Chk. 2003).

The FSM Supreme Court is ever mindful of the constitutional admonition that court decisions shall be consistent with the FSM Constitution, Micronesian custom and traditions, and Micronesia's social and geographical configuration and that in rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia, and that the Kosrae Constitution also provides that court decisions shall be consistent with that constitution, state traditions and customs, and the state's social and geographical configuration. Sigrah v. Kosrae, 12 FSM R. 320, 325 (App. 2004).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the

circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM R. 492, 495-96 (Chk. 2004).

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).

The court is required to make decisions consistent with the FSM's social and geographical configuration. While the FSM is a country of large geographical distances, it has a small land base, a small population, and limited resources. Likewise, it has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. The disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. FSM v. Wainit, 13 FSM R. 433, 440 (Chk. 2005).

The court must make its decisions consistent with the FSM's social and geographical configuration. While the FSM is a nation of large geographical distances, it has a small land base, a small population, and limited resources. It also has a small government legal office and few other lawyers available. The court, consistent with the FSM's social and geographical configuration, thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Kansou, 14 FSM R. 273, 278 (Chk. 2006).

The Kosrae State Court recognizes the universal importance of marriage in our societies; the social and geographical configuration of Kosrae; and the importance of family relationships in our communities and of the building of new family relationships through marriages. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory

conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

The court is bound by Article XI, Section 11, but when the respondent attorney has not pointed to any custom or tradition that either excuses his actions or provides the extraordinary circumstances necessary to prevent the court from suspending him and when he has been convicted of four felony violations of the Financial Management Act and an element of each of those crimes is that a government official act knowingly and willingly, there is conclusive evidence before the court (Disciplinary Rule 10(b) states that a final conviction is conclusive evidence of the crime) that the respondent attorney acted dishonestly and fraudulently since the legislature has decided that the actions taken by respondent attorney are bad, immoral, and unethical since they are crimes punishable by up to twenty years imprisonment. In re Fritz, 14 R. 563, 565 (Pon. 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Decisions of the FSM Supreme Court must be consistent with Micronesian customs and traditions. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

The FSM Supreme Court may consider decisions and reasoning of U.S. courts and other jurisdictions in arriving at its decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering the suitability of that reasoning for the FSM. Berman v. Lambert, 17 FSM R. 442, 449 n.3 (App. 2011).

The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since

it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when the parties have brought none to its attention and none are apparent. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Since the FSM Constitution requires that court decisions be consistent with the social and geographical configuration of Micronesia; since the geographical configuration of Micronesia is such that its population is scattered amongst numerous islands, and transportation between the distant islands of the FSM can be expensive, time consuming and unreliable, and since travel to and from the United States can be especially expensive and time consuming due to the vast distances involved and one commercial airline carrier's monopoly over transportation in the FSM, the FSM's unique geographical configuration generates a public policy impetus in favor of remote testimony by Skype that is lacking in the United States. FSM v. Halbert, 20 FSM R. 42, 48-49 (Pon. 2015).

The Judicial Guidance Clause's first command is that the court's decisions be consistent with the Constitution itself. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, Section 11 of the FSM Constitution, the court will first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of our nation's people and institutions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Although the court is mandated to first consult and apply sources from within the FSM, it is appropriate to look to United States case law for guidance on a complex standing issue, while proceeding against the background of pertinent aspects of Micronesian law, society, and culture. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 n.4 (Pon. 2016).

Although it must look first to FSM sources of law, when an FSM court has not previously construed an aspect of an FSM civil procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Pacific Int'l, Inc. v. FSM, 21 FSM R. 662, 664 n.3 (Pon. 2018).

In rendering a decision, the court must first consult and apply FSM legal sources. In resolving a Constitutional question, first the court must look at the plain meaning of the Constitution's words. If the Constitution is not clear as to a particular provision, the court should ascertain the drafters' intent by examining the Constitutional Convention's records and the reasons expressed for including that particular Constitutional provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

– Kosrae

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

In fiscal matters, the court must hear constitutional objections in order to save the state an expenditure of funds that may be unconstitutional. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

The Kosrae Constitution empowers the state government to collect both tax and non-tax revenue, but that only the tax revenue must be shared with the municipality in which the funds are collected. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

Under the Kosrae Constitution tax revenue must be shared with the municipalities, and what constitutes non-tax, public money revenue need not be shared. A fee paid for use of airport facilities is non-tax public money. This follows a pattern widely recognized elsewhere of a distinction between taxes and user fees. Tafunsak v. Kosrae, 7 FSM R. 344, 348-49 (App. 1995).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

The Governor and Lieutenant Governor receive annual salaries as prescribed by law. The salaries may not be increased or decreased for their terms of office except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

Senators receive compensation as prescribed by law. No law increasing compensation may take effect until the end of the term of office for which the Senators voting thereon were elected. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase, "as prescribed by law," describes how the salaries of the senators; governor and lieutenant governor; and state court justices will be set in the first instance. Any subsequent increase or decrease as to the executive or judiciary will be by statute applicable to all state government employees; with respect to senators, any subsequent increase will occur by statute which becomes effective during a future term of office. Cornelius v. Kosrae, 8 FSM R. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

Since the normal sense or definition of the word "term" does not include term limits, the phrase "for the same term," in Article V, section 6 applies only to the Lieutenant Governor's four year term of office. It does not include any limitation on the number of consecutive terms of office that a person may serve as Lieutenant Governor. The term limits imposed on the Governor thus do not apply to the Lieutenant Governor. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution requires court decisions to be consistent with state traditions and customs, and the state's social and geographical configuration. Tolenoa v. Kosrae, 11 FSM R. 179, 183 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

Article II of the Kosrae Constitution provides for the constitutional rights of the people of Kosrae and also guarantees the right to be confronted by accusers. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

– Kosrae – Case

A difference of opinion between parties is not in and of itself a sufficient basis on which the Kosrae State Court may assume jurisdiction over a dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has original jurisdiction in all cases, except cases within the exclusive and original jurisdiction of inferior courts. "Case" means a justiciable controversy, which is another way of saying that it must be suitable for determination by a court. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

A court will not pass on questions that are abstract, moot, academic, or hypothetical. The constitutionality of yet-to-be-enacted legislation presents a hypothetical question that is not justiciable. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 670 (Kos. S. Ct. Tr. 2002).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

– Kosrae – Case – Standing

Standing exists where a putative plaintiff has a sufficient stake or interest in a justiciable controversy so that he may obtain judicial resolution of that dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

A public official who is called upon to perform a legally required duty which he concludes is violative of the constitution has standing to ask a court to declare the statute unconstitutional. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

When the Legislature could very well exercise its legislative prerogative to decline to enact the proposed legislation irrespective of any declaration by the court of the constitutionality of the proposed legislation, Kosrae does not have a stake or interest that is amenable to judicial resolution. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To have standing, a plaintiff must show that he personally has suffered some actual or threatened injury as result of the defendant's putatively illegal conduct. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 671 (Kos. S. Ct. Tr. 2002).

To the extent that an alleged salary loss constitutes a stake or interest that is subject to judicial resolution, it belongs to the specified officials, and not to Kosrae. Kosrae v. Seventh Kosrae State Legislature, 10 FSM R. 668, 672 (Kos. S. Ct. Tr. 2002).

– Kosrae – Due Process

Written notice in a letter giving a limited-term employee three days notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Kosrae State Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

The Kosrae Executive Appeals Board is authorized to subpoena witnesses, and may do so on its own motion, over the protest of a party. For the Board to question such a witness in absence of a party to the hearing, when the party had notice but elected to walk out of the proceeding to seek a writ of prohibition, is not violative of due process. Palik v. Executive Serv. Appeals Bd., 4 FSM R. 287, 290 (Kos. S. Ct. Tr. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory

person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

The wording of the due process clause of the Kosrae Constitution is the same as that of the FSM Constitution, and are equivalent in terms of scope and meaning, and, in turn, because the FSM Declaration of Rights, which contains the due process clause, is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the Constitutional Convention, United States authority may be consulted to understand the meaning of these rights. Cornelius v. Kosrae, 8 FSM R. 345, 349 (Kos. S. Ct. Tr. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM R. 419, 426 (App. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

A person may not be deprived of property without due process of law. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM R. 226, 237 (Kos. S. Ct. Tr. 2001).

Due process requires that the parties be given the opportunity to comment upon evidence. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

Adjudicatory decisions affecting property rights, such as ownership, are subject to due process requirements of the state constitution. Due process demands impartiality on the part of the adjudicators, including a Land Court Presiding Justice. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since a judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, when the presiding justice's failure to recuse himself from the proceeding resulted in a violation of the appellant's due process rights, the decision determining ownership must be vacated and the matter remanded for further proceedings. Edmond v. Alik, 13 FSM R. 413, 417 (Kos. S. Ct. Tr. 2005).

The FSM Constitution's due process provision protects persons from governments, and those acting under them, and does not create causes of action against private parties. The Kosrae Constitution due process provision functions in the same manner. A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the defendants are individuals and private parties; and not governments and the plaintiff has failed to show that the defendants are state actors and that the conduct in question was a state action, the plaintiff has failed to provide any authority in support of her cause of action based upon due process violation. Accordingly, the Kosrae Constitution due process provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

When reviewing the Land Commission's actions after the plaintiff filed his request in 1987 and the issuance of title in 2002, the question is whether the Land Commission or Land Court deprived the plaintiff or any other party of property in an unfair fashion and whether the procedures used ensured a fair

and rational decision-making process. This is consistent with the due process requirements of the Kosrae Constitution, Article II. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

The Constitutions of both Kosrae and the Federated States of Micronesia state, in identical wording, that a person may not be deprived of life, liberty, or property without due process of law and these two clauses are treated as identical in meaning and in scope and may be analyzed together. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

– Kosrae – Due Process – Notice and Hearing

The essential features of procedural due process, or fairness, require notice and opportunity to be heard. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party not represented by legal counsel is not given the opportunity to present his claim in Land Court, pursuant to the requirements of GCO 2002-13, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Kosrae – Equal Protection

The protection afforded by the Kosrae Constitution equal protection provision can only be asserted when the denial of such rights are based on account of sex, race, ancestry, national origin, language or social status. The constitutional provisions providing equal protection of law apply similarly to laws and government actions. A party alleging an equal protection violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action or a law. Kinere v. Sigrah, 13 FSM R. 562, 569 (Kos. S. Ct. Tr. 2005).

When the plaintiff has failed to show that she was denied her rights based on account of her sex, race, ancestry, national origin, language or social status, and that the conduct in question was either based upon a law or upon a state action, she has failed to provide any authority whatsoever in support of her cause of action based upon violation of equal protection. Accordingly, the Kosrae Constitution equal protection provision does not create a cause of action against these defendants. Kinere v. Sigrah, 13 FSM R. 562, 569-70 (Kos. S. Ct. Tr. 2005).

– Kosrae – Interpretation

Article II, section 1(d) of the Kosrae State Constitution is similar to article IV, section 5 of the FSM Constitution and to the fourth amendment to the U.S. Constitution, and therefore, interpretations of these provisions may be useful for interpreting the provision in the Kosrae State Constitution. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

If language of a provision of the Kosrae State Constitution is susceptible to more than one meaning, the court should look to the legislative history, including the constitutional convention committee notes and journals, all other provisions of the Constitution, and cases from jurisdictions with similar constitutional provisions, to clarify the definitions of the ambiguous term. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

The movant is burdened with a high standard of proof in establishing the unconstitutionality of either state laws or the Constitution. Siba v. Sigrah, 4 FSM R. 329, 335 (Kos. S. Ct. Tr. 1990).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Siba v. Sigrah, 4 FSM R. 329, 342 (Kos. S. Ct. Tr. 1990).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 297 (Kos. 1992).

In analyzing constitutional provisions a court must initially look to the actual words of the constitution. The court should also consider all provisions of the constitution because other sections may touch on the same subject area, thus giving the questionable provision added meaning. If those words are clear and permit only one possible result, the court should go no further. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

If the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee Notes and the Journals, if available, to clarify the definition of the ambiguous term. Tafunsak v. Kosrae, 7 FSM R. 344, 347 (App. 1995).

The party that raises the issue has the burden of proof as to the unconstitutionality of a statute. This burden is high and heavy, and that party must negative every reasonable, conceivable basis which would support the constitutionality of the statute, because statutes are presumed to be constitutional. Tafunsak v. Kosrae, 7 FSM R. 344, 348 (App. 1995).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

If a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Unnecessary constitutional adjudication is to be avoided. Kosrae v. Langu, 9 FSM R. 243, 251 (App. 1999).

The framework for analysis of constitutional provisions has been clearly established by the FSM Supreme Court. The court must first look to the actual words of the Constitution. When the constitutional language is inconclusive or does not provide an unmistakable answer, the court may look to the journal of the Constitutional Convention for assistance in determining the meaning of the constitutional words. Kosrae v. Sigrah, 11 FSM R. 26, 29 (Kos. S. Ct. Tr. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

In analyzing constitutional provisions, a court must first look to the constitution's actual words. If those words are clear and permit only one result, the court should go no further, but if the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee notes and the journals, if available, to clarify the definition of the ambiguous term. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Words in constitutions are ordinarily given their natural, normal, usual, common, popular, general and ordinary sense. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

When the constitutional language is clear and permits only one result, the court goes no further and does not consider its legislative history. Jackson v. Kosrae State Election Comm'n, 11 FSM R. 162, 164 (Kos. S. Ct. Tr. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these two provisions may be useful for interpreting the Kosrae Constitution provision, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 421 (Kos. S. Ct. Tr. 2004).

When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM R. 228, 233 (App. 2006).

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM R. 1, 4 n.2 (App. 2010).

Unnecessary constitutional adjudication is to be avoided. Andrew v. Heirs of Seymour, 19 FSM R. 331, 342 (App. 2014).

– Kosrae – Legislative Privilege

Historically the legislative privilege from arrest has not applied in criminal cases. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The Kosrae Constitution's drafters by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into the privilege as adopted, the drafters felt that charges may still be filed against members at a time different from when a legislator is going to or coming from a legislative session. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The court declines to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business. Sigrah v. Kosrae, 12 FSM R. 320, 326 (App. 2004).

The scope the Kosrae Constitution's legislative privilege is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by the Kosrae Constitution does not apply to criminal cases. Since the Kosrae Constitution's privilege of freedom from arrest does not apply to criminal cases, it is thus inapplicable to a category 4 misdemeanor, which is a criminal offense. Sigrah v. Kosrae, 12 FSM R. 320, 327 (App. 2004).

– Kosrae – Taking of Property

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

– Pohnpei

The tenor of the Pohnpei Constitution is that the government is to be responsible to the people. That Constitution does not provide for sovereign immunity. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon. 1986).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The government has the power to undertake projects in the areas set forth in article 7 of the Pohnpei Constitution, but the provisions of article 7 are merely directory rather than mandatory. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM R. 208, 222 (Pon. S. Ct. Tr. 1987).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

An act of government in conflict with the Pohnpei Constitution is invalid to the extent of the conflict. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

– Pohnpei – Due Process

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flow is prescribed by reasonable legislation. The legislation shall be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it was enacted. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

Procedural due process relates to the requisite characteristics of proceedings tending toward a deprivation of life, liberty, or property and thus makes it necessary that a person whom it is sought to deprive of such a right must be given notice of this fact. An individual must be given an opportunity to defend himself before tribunal or office having jurisdiction of the cause, and the problem of the propriety

of this deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness, in accordance with the Pohnpeian concept of justice. Paulus v. Pohnpei, 3 FSM R. 208, 221 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (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).

A statute does not violate the Pohnpei constitutional safeguards of due process if the provisions of the statute are reasonably clear and give fair notice of what acts or omission are prescribed. Hadley v. Kolonia Town, 3 FSM R. 267, 269 (Pon. S. Ct. App. 1987).

Whether statutory language is so unreasonably vague as to violate the Due Process Clause of the Pohnpei State Constitution is a question of degree, and when the law in question is a municipal ordinance greater leeway should be given to the municipality in recognition of the members' lack of prior training or experience in law or statutory drafting. Hadley v. Kolonia Town, 3 FSM R. 267, 269-70 (Pon. S. Ct. App. 1987).

The right to due process under the Pohnpei Constitution, like the FSM Constitution, only protects people from actions by the government. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 636 (Pon. 2002).

Under the Pohnpei Constitution, substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty, or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flows is prescribed by reasonable legislation. The legislation must be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it is enacted. Kallop v. Pohnpei, 18 FSM R. 130, 134 (Pon. 2011).

– Pohnpei – Equal Protection

A classification of ex-felons currently under sentence is not suspect within the suspect classifications of section 3, article 4 of the Constitution of Pohnpei. Paulus v. Pohnpei, 3 FSM R. 208, 216 (Pon. S. Ct. Tr. 1987).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, the section of the statute is violative of the Equal Rights Clause of the Pohnpei State Constitution by failing to demonstrate that the exclusion of all felons under sentence is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Fundamental Rights

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM R. 76, 81-82 (Pon. S. Ct. App. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Interpretation

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

In interpreting the Constitution, Pohnpeian and English versions must be construed together in harmony to determine the intent of the Constitutional Convention on any subject. Pohnpei v. Hawk, 3 FSM R. 17, 22-23 (Pon. S. Ct. Tr. 1986).

Whether article 7 of the Pohnpei Constitution is self-executing, creating substantive rights that individuals can seek to enforce in court of law, will depend upon the intent of the framers, as disclosed within the four corners of the Constitution when the words are given their ordinary meaning, as well as upon the nature of the acts and the goals they are to accomplish. Panuelo v. Pohnpei, 3 FSM R. 76, 80-81 (Pon. S. Ct. App. 1987).

The words of the Pohnpei Constitution are words in common use and are to be understood according to their ordinary meaning. Panuelo v. Pohnpei, 3 FSM R. 76, 81 (Pon. S. Ct. App. 1987).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM R. 76, 82 (Pon. S. Ct. App. 1987).

In considering an issue of constitutional interpretation of an accused's right to a speedy trial in the light of Pohnpei's experience, manner and usage, and the concept of justice of the peoples of Pohnpei, it is helpful to review the application and development of the constitutional right to a speedy trial in other parts of the world. Pohnpei v. Weilbacher, 5 FSM R. 431, 435 (Pon. S. Ct. Tr. 1992).

Differences in procedure, history, customs and practice do not require similar construction and application of the rights to a speedy trial in Pohnpei as the clause is construed and applied in other jurisdictions. Pohnpei v. Weilbacher, 5 FSM R. 431, 449-50 (Pon. S. Ct. Tr. 1992).

– Pohnpei – Legislative Privilege

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

– Pohnpei – Taking of Property

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

– Professional Services Clause

The Constitution vests the national government with power to act concerning health care and may place some affirmative health care obligations on it. Manahane v. FSM, 1 FSM R. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the national government contemplates action that may be anticipated to affect the availability of education, health care or legal services, the national officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the availability of the services. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide

services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM R. 17, 30 (App. 1989).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 F.S.M.C. 210(8). Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the Federated States of Micronesia, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM R. 249, 256 (App. 1991).

Article XIII, section 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney services in the FSM, and it does not prohibit a state from administering its own bar. Berman v. Santos, 7 FSM R. 231, 237 (Pon. 1995).

Although it is doubtful whether the Constitution's Professional Services Clause protects an attorney's fee from forfeiture in any or all circumstances where the law would seem to allow it, that is an issue that must await another day when there is a case or dispute before the court ripe for adjudication. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. FSM v. Kansou, 13 FSM R. 392, 394 & n.1 (Chk. 2005).

The Professional Services Clause provides that the FSM national government recognizes the people's right to education, health care, and legal services and shall take every step reasonable and necessary to provide these services. The term "the people" refers only to natural persons, and does not include juridical persons such as corporations. FSM v. Kansou, 13 FSM R. 392, 394-95 (Chk. 2005).

The framers' intent in including the Professional Services Clause was to establish a national policy of providing the services when requested by individual citizens unable to provide for themselves, although

these services would not necessarily be free. Thus the framers intended that these professional services were to be provided only to natural persons, not to artificial persons. Therefore neither the Office of the Public Defender's refusal to represent business entity defendants nor Public Defender Directive No. 19 barring such representation is unconstitutional. FSM v. Kansou, 13 FSM R. 392, 395 (Chk. 2005).

The Constitution's framers recognized that legislation would be needed to achieve the Professional Services Clause's policy goals. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause establishes a national policy of providing the services contained in the clause as the FSM acquires the revenue necessary to implement this policy. Inevitably, some services will be provided before others, with Congress to determine the priority. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause's intention is to declare a policy which is to be observed by the FSM government as resources become available, and its language is phrased so as to make it clear that as a matter of policy the government is to take reasonable and necessary steps to achieve the rights stated. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause does not require the national government to take any particular action, or refrain from doing so, at any particular time. It states a policy direction. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

The Professional Services Clause does not bar actions that may have an occasional adverse effect on the provision of a professional service. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480 (Pon. 2020).

If the FSM Development Bank has an affirmative obligation to give special consideration to creating or expanding FSM health care services, it seems to have met that obligation when it provided the original loan so that the borrower could get his medical practice up and running since, within its scope of action (development banking), it took a step reasonable and necessary to provide needed health care services. When the bank twice restructured that loan, its effort allowed the borrowers' clinic to continue providing health services, and had the effect of avoiding reducing health care availability. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 480-81 (Pon. 2020).

When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

The Professional Services Clause cannot, on one hand, encourage the FSM Development Bank to facilitate the provision of health care services by making loans that allow health care professionals to provide such services, and then, on the other hand, prohibit the bank from seeking repayment so that it will have funds to lend to others because, if the Professional Services Clause's policy is to encourage the bank to facilitate the provision of health services, it cannot discourage the bank from facilitating the

provision of health services by making such loans riskier by severely restricting the bank's ability to compel repayment. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

At a minimum, the Professional Services Clause demands that Congress and other parts of the national government, including the court, give special consideration to these services and assure that their availability is not unreasonably or unnecessarily diminished by any national government action. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

When any part of the national government contemplates action that may be anticipated to affect the availability of education, health care, or legal services, the Constitution demands that the national officials involved must consider the people's right to such services and make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily infringing upon that right or reducing the availability of those services. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

Since the court must make a reasonable effort to take every step reasonable and necessary to avoid unnecessarily reducing the availability of article XIII, section 1 health care services, the court will note that the FSM Development Bank is legally entitled to an order of sale for the mortgaged medical equipment and to an order enforcing the borrowers' assignments of income and exclusive possession of the medical clinic premises, but the court will not issue such orders contemporaneously with the judgment. The court will hesitate to issue such orders until all reasonable means of satisfying the judgment by other methods have been explored and exhausted, and will thus give special consideration to health care services and assure that their availability is not unreasonably or unnecessarily diminished by any action it takes. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481-82 (Pon. 2020).

– Supremacy Clause

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM R. 174, 176-77 (Truk 1982).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM R. 405, 428 (Pon. 1984).

Failure to apply a constitutional holding retroactively does not violate the supremacy clause of the Constitution, FSM Const. art. II, § 1. To the contrary, courts may choose between prospective and retroactive application in order to avert injustice or hardship. Innocenti v. Wainit, 2 FSM R. 173, 184-85 (App. 1986).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

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).

The FSM Constitution is the supreme law of the FSM, and any actions taken by the government which are in conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630-31 (Pon. 2002).

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).

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

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

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).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

A Yap state statute cannot divest the FSM Supreme Court of jurisdiction conferred on it by the FSM Constitution, which is the supreme law of the land. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

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).

The Constitution is the supreme law of the FSM, and an act of the government in conflict with it is invalid to the extent of conflict. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

– Taking of Property

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. When such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM R. 339, 354-55 (Pon. 1983).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

The mere act of the United States' funding the FSM and Pohnpei does not subject it to liability for a taking because its involvement was insufficiently direct and substantial to warrant such liability and because one government is not liable for a taking by officials of another government for merely advocating measures that other government should take. Damarlane v. United States, 7 FSM R. 167, 169-70 (Pon. 1995).

An unconstitutional taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Therefore where neither the Trust Territory nor a U.S. government agency could be considered a public entity in the FSM after the effective date of the Compact they are legally incapable of committing a taking after that date. Damarlane v. United States, 7 FSM R. 167, 170 (Pon. 1995).

The government does not engage in a taking where the interests lost are not private property. Damarlane v. United States, 8 FSM R. 45, 52 (App. 1997).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The fundamental concept of procedural due process is that the government may not deprive citizens of life, liberty or property in an unfair, arbitrary manner. A taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

The requirement of a public purpose for a taking means that the deprivation must have as its cause some sort of public purpose. Even if the court were to interpret "public purpose" liberally to include any government policy, no interpretation of the facts could make out a government policy or public purpose

which caused the deprivation when the cause was a quotidian traffic accident which raises a question of tort, not due process. Ladore v. Panuel, 17 FSM R. 271, 275-76 (Pon. 2010).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the Due Process Clause; 2) identify a governmental action which amounts to a deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

The state's failure to appropriate funds to pay a judgment debt does not constitute a taking in violation of the due process clause because the property right created by a judgment against a government entity is merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

A money judgment against the state is not property such that its non-payment constitutes a taking, but a money judgment against the state is a recognition of the state government's continuing debt or obligation. Kama v. Chuuk, 20 FSM R. 522, 529-30 (Chk. S. Ct. App. 2016).

A money judgment against the state is not a property interest but an existing, continuing liability against the state, and a failure to timely satisfy that judgment does not constitute a taking in violation of due process or equal protection. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

The fundamental concept of due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair or arbitrary manner. When such interests are subject to possible government taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

When no property right can be ascribed to the alleged property at issue, the due process standard does not apply. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When seweage 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. Robert v. Chuuk Public Utility Corp., 21 FSM R. 599, 600 (Chk. 2018).

A tort claim that the state's actions excludes all others from the plaintiff's property rises to the level of a constitutional claim and a civil rights violation because it is a taking of the plaintiff's property without just compensation. Robert v. Chuuk Public Utility Corp., 21 FSM R. 599, 600 (Chk. 2018).

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).

No person may be deprived of property without due process of law. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422, 424 (Chk. S. Ct. Tr. 2019).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty, or property in an unfair, arbitrary manner, and when such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

– Title to Land

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM R. 1, 6 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 259 (Pon. 1987).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM R. 365, 382-83 (Pon. 1994).

The FSM Constitution mandates that a noncitizen may not acquire title to land or waters in Micronesia, but the Constitution does not prohibit a noncitizen from acquiring or holding some non-title interest in the land. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not divest noncitizens of their title to land if they had acquired title to land before the Constitution's effective date. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

The Constitution does not prohibit a citizen landowner from becoming a citizen of another country and it does not strip a citizen landowner who does become a foreign citizen of title to land to which he acquired title when he was a citizen. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

A foreign citizen, is barred from acquiring legal title to land anywhere in the FSM. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Noncitizens cannot acquire title to land, but leasing land for 99 years does not constitute acquiring title to land. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d (Chk. 2004).

That a citizen-buyer obtains the funds used to acquire title to land from a noncitizen does not affect the citizen-buyer's title to the land. To hold otherwise would throw all land sales, and land titles derived from them, into question because there is no way to determine from the land records the funds' source. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99d-99e (Chk. 2004).

– Yap

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

– Yap – Interpretation

A constitutional provision that a thing shall be done in such a way "as provided by law" is not self-executing and requires legislation to implement it. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct. Tr. 1996).