COSTS

The determination of costs to be awarded to the prevailing party in litigation is a matter generally within the discretion of the trial court. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

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

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

Attorney's fees awarded as an element of costs are not to be confused with the award of attorney's fees recoverable as a part of damages pursuant to either statute or contract. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Attorney's fees are not a part of recoverable costs under the common law. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

If an appellee prevails on appeal it will be entitled to recover its trial court and appellate costs, and the court may add the trial court costs to the amount of the appeal bond required for a stay. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

The trial court may require an appellant to file a bond to cover costs on appeal. College of Micronesia-FSM v. Rosario, 10 FSM R. 296, 298 (Pon. 2001).

Costs are not synonymous with a party's expenses. Only certain types of expenses are cognizable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant's inability to pay fees and costs or to give security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R.

515, 517-18 (Pon. 2002).

If the court appealed from grants the motion to proceed in forma pauperis, the party may proceed without further application to the FSM Supreme Court appellate division and without prepayment of fees and costs in either court or giving security therefor, except when the Public Defender Office or Micronesian Legal Services Corporation represents an indigent party the transcript fee is reduced to $1.25 per page, to be paid by the public agency, and not by the party personally. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

It is a matter to be resolved between the court reporters and the judicial branch whether the judiciary pays the costs for in forma pauperis litigants' transcripts. An in forma pauperis litigant is not required to prepay transcript costs, although if the in forma pauperis litigant is represented by the Public Defender or Micronesian Legal Services Corporation then that agency must prepay $1.25 per page. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

An in forma pauperis appellant is not required to tender payment in order to receive the transcript he has ordered. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

While costs cannot be awarded against the FSM, allottees are chargeable with costs of action when the allottees have interests sufficiently distinct from the FSM to confer on them standing in their own right. The rule prohibiting the trial court from charging the FSM with costs of this action does not prohibit the trial court from charging allottees with costs. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The general proposition is that sanctions as such do not bear interest, but the Rule 37 sanctions scheme presumes that when sanctions are imposed they will be promptly paid, generally well before the case has proceeded to judgment. Once final judgment has been entered in a matter, any unpaid Rule 37 sanctions previously imposed should be considered costs. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Affirmed Rule 37 sanctions are considered costs that should be included in the money judgment and bear nine percent interest from the date judgment is entered until paid. Adams v.

Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

Taxation of costs is not an additional award for the prevailing party, but is a reimbursement to the prevailing party of actual expenses (costs) incurred. But costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. This is true even when the litigants have successfully recovered under a private attorney general theory. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

When the appellants successfully sought to reverse trial division rulings in one appellee's favor and since the other named appellees were nominal parties unaffected by the appeal, all costs awarded the appellants will be taxable against that one appellee. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Costs are not synonymous with a party's litigation expenses since only certain types of expenses are cognizable as Rule 54(d) costs. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.3 (Yap 2010).

A costs award is not an additional award to the prevailing party but is a reimbursement to the prevailing party of certain actual expenses (costs) incurred. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

When no "common nucleus of facts" exists between the trespass claims and the civil rights claims, the trial court did not err in assigning liability for trespass only to McVey and Do It Best and liability for the civil rights violation only to the Pohnpei Board of Trustees; thus the trial court's conclusions of law apportioning costs were not in error. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 440-41 (App. 2011).

The point of awarding costs is to award the prevailing party as a part of the final judgment, aside from reasonable attorney's fees, which may be awarded only by statute. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. An award of fees and costs thus involves the party, not the particular firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

The point of a costs award is not to make an attorney or his law firm whole, but to make the prevailing party whole. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

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

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

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

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court's order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A motion to try the plaintiff's remaining claim in a Pohnpei venue will, in the court's discretion, be denied when the venue statute required that he originally file his complaint in Chuuk because Chuuk was the state in which all the defendants could be found and the statute favors convenience for the defendants over convenience for the plaintiff. But because transporting the Pohnpei witnesses to Chuuk would work a distinct hardship on the plaintiff, the court will allow him three months to depose all the needed Pohnpei witnesses in order to preserve their testimony for trial and if he prevails at trial, the expenses of these depositions shall be taxed as costs payable by the defendants. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Costs are not synonymous with a party's expenses since only certain types of expenses are cognizable as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

– Allowed

The FSM Supreme Court's trial division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 26 (App. 1985).

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where it appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. Rawepi v. Billimon, 2 FSM R. 240, 241 (Truk 1986).

The provision that the cost of printing or otherwise producing necessary copies of briefs, appendices or copies of the record shall be taxable in the Supreme Court appellate division at rates not higher than those generally charged for such work in the area where the clerk's office is located, does not set the amount to be awarded; it sets a cap or upper limit on the actual costs incurred that can be reimbursed. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

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

Appellate Rule 39(c) permits the recovery of costs for producing necessary copies of briefs by word processor or photocopier, but not the costs for producing the original. The maximum amount allowable for word processed copies of briefs is limited to the amount allowed for photocopy services. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs for printing and copying are expenses that traditionally have been included within costs that are awarded to prevailing parties. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 224 (Chk. S. Ct. App. 2001).

When, service was done by servers employed at various times by plaintiffs' counsel, but who were duly appointed process servers and charged separate fees for the service, they were acting as private process servers. Fees charged by private process servers may be recoverable as costs. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

Deposition costs will be allowed when the transcription was done and the deposition was admitted into evidence at trial even though the documentation for the deposition charge was a check made payable to an attorney in the Philippines, and noted as such on the check stub. Amayo v. MJ Co., 10 FSM R. 371, 385-86 (Pon. 2001).

Service costs are always allowable to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Transcript and copying expenses are allowable costs when they represent payments to others for that service. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

Costs that have been awarded in the FSM include service costs, transcript and copying

costs when they represent payment to others for services, and reasonable travel expenses when there is a showing of no attorney available on the island where the litigation is taking place. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

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

A prevailing party is entitled to costs taxable by FSM Civ. R. 54(d), such as expenses for service of process and service of subpoenas. Uehara v. Chuuk, 14 FSM R. 221, 228 (Chk. 2006).

A prevailing party will be allowed costs for depositions. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fees charged by private process servers may be recoverable as costs, because service costs are always allowable to the prevailing party. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Any expenses actually incurred in copying needed documents in the record will ultimately be taxed as costs to be borne by the non-prevailing party(ies) once the court has rendered its appellate opinion. Enengeitaw Clan v. Shirai, 14 FSM R. 621, 625 (Chk. S. Ct. App. 2007).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award as costs a prevailing party's reasonable travel expenses for its attorney. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Deposition costs will be allowed when the transcribed deposition was admitted into evidence at trial. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The expense of a trial transcript is taxable when that transcript is necessarily obtained for use in a trial, particularly when the trial was long and the issues were complex. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

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

An attorney's reasonable travel expenses are allowable as costs when there is a showing that no attorney is available on the island where the litigation is taking place, especially when the attorneys' travel expenses were reasonable and the actual expenses pro-rated proportionally with other clients on whose behalf they also traveled. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

When the prevailing parties' counsel's travel expenses were necessarily incurred for services which were actually and necessarily performed, his travel expenses will be awarded as costs because the court may allow and tax any additional items of actual disbursement, other than fees of counsel, which it deems just and finds to have been necessarily incurred for services which were actually and necessarily performed for the prevailing party. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

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

Service costs are awarded as a matter of course to the prevailing party. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Service of process expenses are always allowable as costs to the prevailing party. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Plaintiffs awarded $500 damages are, as the prevailing party, also entitled to reimbursement of the court's $10 filing fee. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

Service costs are always allowable to the prevailing party. A prevailing party is entitled to costs taxable by FSM Civil Rule 54(d), such as expenses for service of process and service of subpoenas and service of process costs may be apportioned among the defendants. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 151 (Pon. 2010).

The $200 for service of a writ of attachment and levy; the $100 for Yapese translation of the class notices; and the $238.75 for the required publication of legal notice are expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of a class action and are expenses which would have been taxable as Rule 54(d) costs if such costs had been taxed separately. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Photocopying costs may be allowed if they represent payments to others for that service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 n.4 (Yap 2010).

Expenses to travel to the case's venue have usually been allowed as costs when there has been a showing that there were no local attorneys or law firm available. This is a sound principle which should also be followed in awarding class action expenses. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206-07 (Yap 2010).

Costs for service of process and service of subpoenas are routinely allowable to the prevailing party under Civil Rule 54(d). Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Service of process expenses are an exception in that they can always be awarded as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

When it is shown that no attorney is available on the island where the litigation is taking place, the trial court may award a prevailing party its attorney's reasonable travel expenses. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

The court is particularly inclined to view travel costs as reasonable when the attorney's overall travel expenses were reasonable and the actual expenses were pro-rated proportionally with other clients on whose behalf the attorney also traveled. The court is not inclined to grant any travel costs that are not prorated. Kaminanga v. Chuuk, 18 FSM R. 216, 221 n.4 (Chk. 2012).

Service of process costs will be allowed when the plaintiff's attorney's fee request states that his attorney reviewed the affidavits of service of the complaint on five named persons and on two national government offices and this corresponds to the \$140 (\$20 $\times$ 7 services of process) sought for service of the summons and complaint. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

When no explanation is made of why trial subpoenas were served twice but when it is apparent from the file that the duplicate service was necessitated by a change in the trial date after the first service was made, the full request for service of trial subpoenas will be allowed. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

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

When the appellant was only partially successful in his appeals, the court will order that the costs of the appeals be borne by the parties with the exception that, since the reporter's

transcripts were particularly helpful, the appellant will be awarded the cost of the reporter's transcripts of the trial court order-in-aid-of-judgment hearings. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

The clerk will tax costs of $91 in expenses for reproducing and serving the prevailing appellant's briefs when that amount was verified and appears reasonable. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

Since notice by advertisement in newspapers is required for *in rem* actions against vessels, those expenses will be allowed as costs when adequately documented. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Costs for service of process and service of subpoenas are routinely allowed to the prevailing party under Civil Rule 54(d). Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When adequately documented and both reasonable and necessary, a corporation search fee will be allowed as a cost since it is important that the correct parties be named as defendants. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Translation expenses are generally allowed as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

A prevailing party will usually be allowed costs for depositions unless they are shown to be unnecessary. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When the experts' research and reports were necessary and indispensable for the plaintiff to establish and the court to grant a default judgment and the fees were appropriate and not excessive, they will be allowed as taxable costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79-80 (Pon. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

– Disallowed

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the

unavailability of local counsel. Salik v. U Corp., 4 FSM R. 48, 49 (Pon. 1989).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

The court commits no error, when a question of sufficiency of witness fees is not brought promptly to the attention of the court, to consider the matter as an allowance of costs. In re Island Hardware, Inc., 5 FSM R. 170, 175 (App. 1991).

Where there are elements of victory and loss for both parties there is not a prevailing party to which costs could be allowed. In re Island Hardware, Inc., 5 FSM R. 170, 175 (App. 1991).

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. Nena v. Kosrae (III), 6 FSM R. 564, 569-70 (App. 1994).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

A prevailing party will be allowed costs for depositions and copying costs which represent payments to others for that service, but not the cost of copying within the law office. Long distance telephone and facsimile expenses incurred in communication between the lawyer who appeared and the client and other lawyers, claims for postage and courier expenses, and expenses not adequately explained are disallowed. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Costs that are an avoidable consequence of the prevailing party's actions will be disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 & n.1 (Chk. 1999).

Expenditures for photocopying, toll phone calls between lawyers, postage and courier services are disallowed. The extra expense of first class air travel is also disallowed. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

On appeals, copying costs are disallowed to the extent that they exceed those generally charged for such work in the area where the clerk's office is located, in this case – Pohnpei, where the FSM appellate clerk's office is located. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Expenses for postage and courier services are disallowed. They are not a part of the usual costs recoverable under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 308 (App. 2000).

Costs are customarily awarded the prevailing party. However, costs for service on those defendants who were prevailing parties are not allowed to the plaintiff. Nor are costs for service in and filing fee for the case originally filed in state court allowed as costs are to be awarded only for the costs in this case to the prevailing party in this case. Estate of Mori v. Chuuk, 10 FSM R. 123, 125 (Chk. 2001).

Costs for an election defendant's airfare will be denied when it is for an uncertain amount and no evidence of this expense been provided to the court and when it is an expense he would have incurred anyway, because he would have had to return shortly from Honolulu to take his seat in the Legislature, and because it is an expense he would not have incurred if he had not voluntarily left Chuuk for Honolulu. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Counsel's travel expenses to and from Pohnpei for litigation on Pohnpei may not be awarded as costs when counsel maintains a Pohnpei office and is thus local counsel. Amayo v. MJ Co., 10 FSM R. 371, 386 (Pon. 2001).

If, for a telephone hearing, a party's counsel initiated the call and bore that expense as a telephone charge then that party, if the prevailing party, would be entitled to tax those telephone charges as a cost, but when it is impossible to tell from the submitted expense billings, which, if any, those telephone charges were, no charges will be allowed. Udot Municipality v. FSM, 10 FSM R. 498, 501 (Chk. 2002).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When no substantive law or contractual provision would permit the plaintiff to recover the type of costs he seeks, those costs will not be included in the judgment. Walter v. Damai, 12 FSM R. 648, 650 (Pon. 2004).

When insufficient information has been provided concerning the costs set out in an affidavit to enable the court to make an award of costs, none of these costs will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 42 (Pon. 2004).

When an affidavit sets out costs totaling $1,605.15, but no description is provided for the individual amounts beyond the notation "direct expense," the court can make no determination whether these expenses constitute awardable costs and none will be awarded. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Fax and long distance telephone charges are not recoverable as costs. Copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing plaintiff is

not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 n.1 (Chk. 2005).

When a successful litigant has made no showing that the $120 in copying costs he seeks were expenses incurred for copying done outside of counsel's office, this item of costs will be denied. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 527 (Pon. 2005).

Attorney's fees are not part of recoverable costs under the common law. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and will be disallowed as costs, except where there is a showing of the unavailability of local counsel. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

Fax and long distance telephone charges are not recoverable as costs, but copying costs may be recoverable if the copies are not made in-house, and the costs represent payment to others. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

POL and transportation costs for the plaintiffs in their efforts to meet with the defendant to come to a resolution of this matter is a type of cost that is not normally recoverable. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Prevailing plaintiffs cannot be awarded $1,000 for bringing the law suit since this type of cost is not normally awarded and no evidence of what was included in the $1,000 was provided. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Compensation for time and expenses in a state court can only be sought (if at all possible) in that state court. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

A $49.28 "court filing fee" will be disallowed when it is unexplained and since another court's filing fee will not be awarded as a cost. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

The $25 cost for a certificate of good standing will be disallowed as a cost even though it was a necessary expenditure in order to apply to appear *pro hac vice* because it is considered part of overhead. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenditures for photocopying, toll phone calls, faxing, postage, and courier services are disallowed as costs. Internet expenses fall in the same category and are therefore also disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Law library research charges also fall into this category and will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74 (Yap 2007).

Expenses not adequately explained are disallowed as costs, as are expenses that are either overhead items or are for personal use. "Working meals" are not allowed as costs since if that is what they were, the attorney was compensated for the time spent working. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 74-75 & n.8 (Yap 2007).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

When an expert witness's research or testimony was not crucial to the resolution of any issue, but was helpful only to estimate the market cost for protein needed to replace the fish not harvested and the expert's work on this point relied on another expert witness's factual research for which that other expert billed $1,265.70, the court may find that $1,500 would be a fair and reasonable cost for the value of the expert's work that was indispensable to the resolution of the value of the lost fish harvest issue. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Westlaw electronic research charges are properly reflected as a part of a law firm's overhead, and as such, are included in the attorney's fees as opposed to ordinary costs and will be disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Expenditures for toll phone calls, postage, and courier services are disallowed as costs. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Costs may be allowed for copying costs which represent payments to others for that service, but not the cost of copying within the law office. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

A "business privilege tax" that is part of the cost of being in business on Guam and is either part of a law firm's overhead, which cannot be taxed as a cost, or an increase in or part of the attorney's hourly rate and thus already considered under the reasonable attorney fee award. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Even if a law firm client has agreed to compensate the law firm for its gross receipts tax liability on income received from the client, the court will not award it because what the client has agreed to pay is not relevant to the court's determination of a reasonable fee. The court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client since the entitlement to a reasonable attorneys' fees award is the client's, not his attorney's, and the amount the client actually pays his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Photocopying charges are generally disallowed as costs unless those charges represent payments to others for that service and are not for the cost of copying within the law office. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 151 (Pon. 2010).

Extra charges for the attorney's gross revenue taxes on costs are disallowed. Gross revenue taxes are the attorney's responsibility and not the responsibility of the attorney's client or of an adverse party to whom the fee may be shifted. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 152 (Pon. 2010).

The $80.50 listed as purchases of beer, bottled water, and the like from a Yap hotel mini-bar; the $2.95 for DVD rental; $34 listed as "no receipts (investigator's beer)" are disallowed since they are not expenses reasonably and appropriately incurred in the prosecution of the class action. The $16.95 listed as breakfast and lunch "no receipts" is disallowed since it is not adequately documented. The $111.91 for groceries purchased in a Guam supermarket is unexplained and therefore disallowed. The $408.80 in charges for internet access from a Yap hotel, even if used for occasional legal research or case-related e-mail, are excessive and therefore disallowed. The $620.50 claim for "expenses in the form of legal research subscription charges, and long distance phone charges" is undocumented and therefore disallowed and "legal research subscription," although since it is undocumented the court cannot be certain, appears that it may properly be part of overhead and not case specific. Also undocumented, and therefore disallowed, is $521.25 in photocopying and postage fees for filing and service. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

The court has long followed the principle that when awarding costs, costs may be allowed for copying expenses which represent payments to others for that service, but not the cost of copying within the law office. So when there is no indication that a copying charge is for payment to others for copying services, that charge will be disallowed. Sandy v. Mori, 17 FSM R. 245, 246 (Chk. 2010).

An attorney's travel expenses to Chuuk will be denied as costs when the attorney's law firm maintains a law office on Chuuk even though the attorney did not reside on Chuuk and only made occasional trips to Chuuk from Pohnpei. Sandy v. Mori, 17 FSM R. 245, 246-47 (Chk. 2010).

Photocopying costs are disallowed unless it can be shown that the photocopying was done outside of the law firm. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

A "gross revenue tax" surcharge will be disallowed as costs. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 441 (App. 2011).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing party is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees since attorneys' fees are not costs under Rule 54(d) or the common law. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a review of the record shows that a transcript of a hearing was not necessary for the determination of the appeal, its cost would be disallowed even if the appellant had prevailed on appeal. Kaminanga v. Chuuk, 18 FSM R. 216, 222 (Chk. 2012).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When nothing in the record indicates that the prevailing party ever timely filed his verified bills of costs with the appropriate court clerks and when it is now too late to file them, he has waived his right to the appellate costs by his failure to timely file verified bills of cost. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Service costs and others that are generally allowed to a prevailing party should be taxed if proven. Certain other expenses, such as phone calls, postage, and in-house copying, are generally not allowed. The determination of costs awarded to the prevailing party is a matter generally within the trial court's discretion. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

Unexplained costs are disallowed. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A request for attorney's fees sought as costs must be denied because attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

While, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, even if attorney's fees could be awarded for vexatious actions during an appeal, an issue not decided, fees would not be awarded when, although much of the appellees' motion to dismiss was a petty attempt to avoid a ruling on the merits, the motion as a whole was not thoroughly unreasonable. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied since attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there was no appellee in the case, there is no one to tax costs against. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

When there is no appellee against whom the prevailing appellants may tax costs, the

appellants' bill of costs must be denied in its entirety. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

The expense of service of the briefs will be disallowed. Postage is considered overhead and generally not allowed as a cost so that expenses for postage and delivery services are disallowed. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

Generally, expert witness fees and research expenses are not taxable costs, but successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive, but when an expert's research and testimony went to support claims that the court rejected, that expert's research expenses for those claims are disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

When an expert's fee was for an affidavit prepared in support of only a rejected damages claim, it will be disallowed. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

The court cannot award, disguised as costs, what are damages for an unsuccessful salvage contract cause of action that was neither pled nor tried. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

Government expenses as a result of a ship grounding are not a cost of litigation and when they were neither plead as a cause of action nor prayed for as relief, these expenses are not recoverable either as costs or as damages in a default judgment since a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

When a motion for costs and attorney's fees contains no supporting grounds for this request in the motion's text, the motion will be denied without prejudice to any claim for costs taxable under Appellate Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

– Procedure

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. Nena v. Kosrae (III), 6 FSM R. 564, 568-69 (App. 1994).

The filing of a petition for rehearing does not automatically extend the time for filing a bill of costs or for opposing a timely filed bill of costs, to a period beyond the ruling on the petition for rehearing. Nena v. Kosrae (III), 6 FSM R. 564, 569 n.5 (App. 1994).

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

Appellees intending to ask for Rule 38 costs and damages because the appeal is frivolous must, although the rule does not require a motion filed separately from the brief, give the appellant more notice than first raising the issue at the end of appellees' oral argument. Phillip v. Moses, 10 FSM R. 540, 546-47 (Chk. S. Ct. App. 2002).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

Rule 54(d) permits costs to be allowed against the non-prevailing party. Accordingly, a prevailing plaintiff may request costs to be awarded by filing an affidavit. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Transcript costs are not taxable by the appellate division, but (along with any fees for the appellants' filing of the notices of appeal) are taxable in the trial division. Ruben v. Hartman, 15 FSM R. 240, 242 (Chk. S. Ct. App. 2007).

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Since between a supporting affidavit and the returns of service filed by the process servers, it should be apparent on the record that the claims for service costs represented payments to others for service, and since this has been sufficient when cost awards for service have been sought, an attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service will suffice although the better practice would be to also file receipts with the costs request rather than relying on the trial court to consult the record to see who performed the service. Berman v. Pohnpei, 17 FSM R. 360, 374 (App. 2011).

Costs are generally taxed against, not for, an unsuccessful appellant unless otherwise ordered, and appellate costs are ordinarily taxed in the appellate division except that transcript fees and the costs of the reporter's transcript, if necessary for the determination of the appeal are taxable in the trial division by the prevailing appellate litigant. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

A service cost request has always been sufficient when the request included the attorney's affidavit plus a return of service in the record showing that someone other than the attorney's office performed the service even though the better practice would have been to also file receipts with the request rather than relying on the trial court to consult the record to see who performed the service. Poll v. Victor, 18 FSM R. 402, 406 (Pon. 2012).

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

Costs for a reporter's transcripts are taxed in the court appealed from in the case that was appealed. George v. Sigrah, 19 FSM R. 210, 221 (App. 2013).

A party who desires costs to be taxed in an appeal case shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Nena v. Saimon, 19 FSM R. 393, 394-95 (App. 2014).

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

Even though no opposition was filed to an appellate bill of costs, it still must be considered by a judge when it asks for attorney's fees since attorney's fees can only be determined by a judge, not a clerk. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

When a party desires that appellate costs be taxed, the party must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed, but when there is opposition, the matter is usually referred to the court or a judge thereof. In re Sanction of Sigrah, 19 FSM R. 396, 397-98 (App. 2014).

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

A prevailing party who desires costs to be taxed must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of the appellate judgment. The appellate clerk will act on the bill of costs, at least where no opposition has been filed; when there is opposition, the matter is usually referred to the court or a judge thereof. Andrew v. Heirs of Seymour, 19 FSM R. 451, 452 (App. 2014).

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

– When Taxable

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

FSM Civil Rule 68, allowing for taxation of costs against a plaintiff who declines the defendant's offer of judgment and who then obtains a judgment less favorable than the amount of the offer, does not apply when the litigation is dismissed. Mailo v. Twum-Barimah, 3 FSM R. 411, 413 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. Mailo v. Twum-Barimah, 3 FSM R. 411, 415 (Pon. 1988).

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. Morris v. Truk, 3 FSM R. 454, 456-57 (Truk 1988).

When a plaintiff's motion is denied on the merits, the defendant may recover costs under FSM Civil Rule 54(d) if properly verified. Berman v. Kolonia Town, 6 FSM R. 242, 244 (Pon. 1993).

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. Nena v. Kosrae (III), 6 FSM R. 564, 568-69 (App. 1994).

Costs may be allowed to a party prevailing against an indigent or *in forma pauperis* plaintiff who raised irrelevant matters and engaged in vexatious procedures or whose actions were frivolous or malicious. Damarlane v. United States, 7 FSM R. 468, 469-70 (Pon. 1996).

Although it is especially important to avoid any approach calculated to favor the wealthy and deprive poor persons of access to the courts, that principle should not operate to penalize the indigents' opponent whose costs are increased because of frivolous claims and proceedings which are prolonged by repetition of contentions already ruled upon. Damarlane v. United States, 7 FSM R. 468, 470 (Pon. 1996).

Unless the court directs otherwise, costs are allowed as of course to the prevailing party. A prevailing party is the one in whose favor the decision is ultimately rendered when the matter is finally set at rest, and does not depend upon the degree of success at different stages of the suit. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

When the trial court decides the matter on the merits, based on the evidence, in favor of the defendants and the plaintiffs are not granted a permanent injunction, the defendants are prevailing parties who are appropriately awarded costs. Damarlane v. United States, 8 FSM R. 45, 54 (App. 1997).

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

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

A prevailing party in an appeal is routinely entitled to its costs and when an appeal is dismissed, costs are to be taxed against appellant unless the parties otherwise agree or court

orders otherwise. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

Costs are generally allowed as of course to the prevailing party. Udot Municipality v. FSM, 10 FSM R. 354, 362 (Chk. 2001).

While costs are allowed as of course to a prevailing party, costs against the FSM, its officers, and agencies are imposed only when authorized by statute. Udot Municipality v. FSM, 10 FSM R. 498, 501, 502 (Chk. 2002).

Being allowed to proceed in forma pauperis only relieves an appellant from prepayment of fees and costs, not from ultimate liability for those costs. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 519 (Pon. 2002).

If the appellate court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

Generally, unless the court directs otherwise, prevailing parties are entitled to costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Determination of costs awarded to prevailing parties is generally a matter within the trial court's discretion, and a trial court has jurisdiction to issue an order assessing costs, even after a notice of appeal has been filed. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Rule 54(d) presumes that costs will be allowed to the prevailing party. But this presumption may be overcome. The burden is on the unsuccessful party to show circumstances sufficient to overcome the presumption in favor of allowing costs to the prevailing party. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321 (Pon. 2003).

Although a trial court has discretion when awarding costs, the discretion is narrowly confined because of the strong presumption created by Rule 54(d) that the prevailing party will recover costs. Generally, only the prevailing party's misconduct worthy of a penalty or the losing party's inability to pay will suffice to justify denying costs. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 321-22 (Pon. 2003).

The presumption that the prevailing party will recover costs has been overcome and costs denied where there is a wide disparity between the parties' economic resources, particularly when the non-prevailing party is indigent. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 322 (Pon. 2003).

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).

The principle of not imposing costs on losing indigents may appear to penalize solvency and to encourage other lawsuits against successful businesses because there is no risk of incurring costs if the action fails. However, this principle only applies when the action is pursued in good faith. Costs may be taxed when an indigent plaintiff's case is frivolous or malicious or when he has raised irrelevant matters and engaged in vexatious procedures. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

The most common basis for denying costs to prevailing defendants is the indigency of the losing plaintiff, coupled with good faith of the indigent and the non-frivolous nature of the case. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM R. 319, 323 (Pon. 2003).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 2003).

If the Supreme Court appellate division determines that an appeal is frivolous, it may award just damages and single or double costs, including attorney's fees, to the appellee. FSM Dev. Bank v. Adams, 12 FSM R. 456, 462 (App. 2004).

Rule 68 provides that if a defendant makes an offer of judgment, and the judgment ultimately obtained is not more favorable than the offer, then the offeree must pay the costs accrued after the offer. It does not apply when the offers of judgment are for the amount claimed in the original complaint and the case is tried and judgment entered for the higher amount claimed in the amended complaint. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

An award of costs depends upon a finding of reasonableness by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Rule 54(d) presumes that costs will be allowed to the prevailing party, unless the court directs otherwise. Accordingly, a prevailing plaintiff may file and serve his requests for costs to be taxed against the defendant, who shall respond to the request within 10 days of the request's service. The court shall thereafter rule on the request for allowance of costs. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

Costs are awarded as a matter of course to the prevailing party as a part of the final judgment. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

When a case is dismissed at the close of the plaintiff's case-in-chief, the defendants, as prevailing parties, are entitled to their costs of action. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

Costs are awarded to prevailing parties as a matter of course. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Prevailing parties are entitled to their costs on appeal. Ruben v. Hartman, 15 FSM R. 240,

242 (Chk. S. Ct. App. 2007).

Generally, costs cannot be awarded for or against the state government. Ruben v. Hartman, 15 FSM R. 240, 242 n.1 (Chk. S. Ct. App. 2007).

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

Upon a post-judgment application, costs are routinely awarded to the prevailing party. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

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

A successful process server's pay should not be dependent on a law firm's later litigation success. Poll v. Victor, 18 FSM R. 402, 405 n.1 (Pon. 2012).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Appellate costs are awarded to the prevailing party under FSM Appellate Procedure Rule 39. Rule 39 costs are only those costs incurred because of the appeal, not costs incurred in the trial division proceedings. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Plaintiffs, as the prevailing party, will be awarded their reasonable costs. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the appellants prevailed by having the permanent injunction – a final decision – against them vacated and they are now in a position where either they or the other side may ultimately obtain a final judgment in their favor on remand, they are thus prevailing parties for the purpose of the appeal and costs will be taxed in their favor. Andrew v. Heirs of Seymour, 19 FSM R. 451, 453 (App. 2014).

When the defendant is the prevailing party, it shall be awarded its reasonable costs. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the defendants are the prevailing party, they shall be awarded their reasonable costs. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

The general rule is that the prevailing party is entitled to costs per Rule 54(d), but Rule 54(d) also provides that "costs against the State of Chuuk, its officers, and agencies shall be imposed only to the extent permitted by law." Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543 (Chk. S. Ct. Tr. 2014).

When no written documentation was submitted to show that the plaintiff would be entitled to recover its costs if the plaintiff prevailed against the state agency in a civil suit and when no statute authorizes a plaintiff to recover costs on a breach of contract claim against the State of Chuuk, the court will deny the plaintiff's motion for costs. Shigeto Corp. v. Land Comm'n, 19 FSM R. 542, 543-44 (Chk. S. Ct. Tr. 2014).

Since an embassy is immune from suit, a case against it will be dismissed. Since the court cannot exercise jurisdiction over it, the embassy, as a prevailing party, is also entitled to its costs. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

Rule 68 provides that the defendant may serve an offer to allow judgment to be taken against the defendant for the money with costs then accrued. If within 10 days after the offer's service, the plaintiff serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof. If the plaintiff rejects this offer, and the judgment finally obtained by plaintiff is not more favorable than the offer, the plaintiff must pay the costs incurred after the offer was made. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

When the defendant made a Rule 68 offer of judgment for $1,000 and when, after trial, the plaintiff was awarded nothing, the plaintiff is liable for the defendant's costs after the offer date. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436 (Chk. S. Ct. Tr. 2019).

Actions alleging due process violations involving land are not exempt from Rule 68 offer

of judgment sanctions. Nor are proclamations of indigence. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 436-37 (Chk. S. Ct. Tr. 2019).

Rule 68 exists to encourage compromise when a case lacks merit. When a plaintiff fails to see the lack of merit within his case, Rule 68 sanctions such failure by awarding costs to the party that made the settlement offer. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 434, 437 (Chk. S. Ct. Tr. 2019).