TITLE 17

ADMINISTRATIVE PROCEDURE

CHAPTERS

CHAPTER 1

FSM Administrative Procedures

SECTIONS

§ 101. Definitions.

As used in this chapter:

(1) "Agency" means each authority of the Government of the Federated States of Micronesia whether or not

it is within or subject to review by another agency, but does not include:

(a) the Congress of the Federated States of Micronesia; or

(b) the courts of the Federated States of Micronesia; or

(c) the Micronesian Maritime Authority.

(2) "Agency action" includes the whole or part of an agency regulation, order, decision, license, sanction, relief, or the equivalent or denial thereof, or a failure to act.

(3) "Hearing officer" means the administrative official authorized to conduct a hearing pursuant to section 108 of this chapter.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or condition of a license.

(6) "Order" means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter.

(7) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, to an agency proceeding.

(8) "Person" means an individual, partnership, corporation, association, clan, lineage, State or local Government, or public or private organization of any character other than an agency.

(9) "Regulation" means each agency statement of general applicability that establishes policy, implements, interprets, or prescribes law, or describes the organization, procedure, or practice requirements of any agency and which has the force and effect of law. The term includes the amendment or repeal of a prior regulation.

(10) "Regulation making" means the process for formulating, amending, or repealing a regulation.

(11) "Relief" includes the whole or a part of an agency:

(a) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(b) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(c) taking of other action on the application or petition of, and beneficial to, a person.

(12) "Sanction" includes the whole or a part of an agency:

(a) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(b) withholding or denial of relief;

(c) imposition of penalty or fine;

(d) destruction, taking, seizure, or withholding of property;

(e) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(f) revocation, modification, or suspension of a license; or

(g) taking other compulsory or restrictive action.

Source: PL 1-150 § 1; PL 7-92 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at http://fsmgov.org.

The FSM Supreme Court website contains court decisions, rules, calendars, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at http://www.fsmcongress.fm/.

Case annotations:

Administrative Law—Administrative Procedure Act

FSM Supreme Court finds within Administrative Procedures Act, 17 F.S.M.C. §§ 101-113, the necessary flexibility to expedite review of an administrative proceeding. *Olter v. National Election Comm'r*, 3 FSM R. 123, 128 (App. 1987).

While the naked right to legislate may not be delegated, the power to enforce legislation and to enlarge on standards defined in a statute can be delegated if the statute contains reasonable guidance and reasonable definition of the standards to be employed and the matter that is to be regulated. In order for the delegation of legislative authority to pass constitutional muster, there must be a delineation of policy, a designation of the agency to implement it, and a statement of the outer boundaries of the authority delegated. *Sigrah v. Speaker*, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

If the legislative body has given to administrative officials the power to bring about the result legislated, rather then the power to legislate the result, then there is no unconstitutional delegation of legislative power. A proper delegation of legislative power may be made to an official within the executive branch. *Sigrah v. Speaker*, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may make a delegation of power to specified officials, or administrative agencies within the executive branch. This necessarily includes the Governor, and such a delegation is appropriate because a proper, limited delegation of power confers on the delegatee the power to bring about a result that has already been legislated. *Sigrah v. Speaker*, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. *Olter v. National Election Comm'r*, 3 FSM R. 123, 129 (App. 1987).

In administrative law in regard to controversies in which the same parties and the same subject matter are involved, when two or more tribunals have concurrent jurisdiction, the tribunal first assuming jurisdiction retains it to the exclusion of all other tribunals in which the

proceeding might have been initiated. Mark v. Chuuk, 8 FSM R. 582, 583-84 (Chk. S. Ct. Tr. 1998).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. *Olter v. National Election Comm'r*, 3 FSM R. 123, 129 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA's judicial review provisions are inapplicable to appeals from denial of such petitions. *Olter v. National Election Comm'r*, 3 FSM R. 123, 130 (App. 1987).

The APA enacted by the Congress of the Federated States of Micronesia is quite similar to the United States Administrative Procedure Act, but differs in that the FSM's APA imposes more affirmative obligations and requires the court to make its own factual determinations. *Olter v. National Election Comm'r*, 3 FSM R. 123, 131 (App. 1987).

Decision by Secretary denying applicant a permit to practice law in Yap is an agency decision within the provisions of the Administrative Procedures Act. *Michelsen v. FSM*, 5 FSM R. 249, 253 (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 citizens of the FSM, 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).

§ 102. Procedure for adoption of regulations.

(1) Prior to adoption, amendment, or repeal of any regulation, the agency shall:

(a) publish notice of its intended action for at least 30 days by posting copies of the proposed regulation in convenient public places in the State capitals including at least the principal National Government office in each State, each State Governor's office, the office of the clerk of courts of the State and National courts and in each State capital post office. The notice shall include:

(i) a statement of either the terms or substance of the proposed regulation or a description of the subjects and issues involved;

(ii) reference to the authorities under which the action is proposed;

(iii) the time when, the place where, and the manner in which interested persons may present their views thereon; and

(iv) the proposed effective date;

(b) communicate the general nature of the proposed regulations and the place where the regulations are available for review by radio announcements in each State in English and in the language or languages of the State;

(c) transmit copies of the proposed regulations to the Speaker of the Congress, to the chairman of each standing committee thereof, and to the Legislative Counsel;

(d) afford all interested persons reasonable opportunity to submit data, views, or arguments, in writing. In all proceedings under this section, an opportunity for an oral hearing must be granted if requested by the Congress of the Federated States of Micronesia or a committee thereof, a Government subdivision or agency, or a State or local government. Hearings afforded pursuant to this provision shall be conducted in accordance with section 108 of this chapter. The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) If the President, or in his absence, the Vice President, finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing his reasons for that finding, an emergency regulation may be adopted without prior notice or hearing upon any abbreviated notice and hearing that is found to be practicable. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsection (1) of this section is not precluded.

(3) Regulations must be adopted in compliance with this section. A judicial challenge on the basis of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation, unless good cause is shown justifying an inability to bring the action timely.

Source: PL 1-150 § 2; PL 7-92 § 2; PL 11-74 § 1, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Case annotations: When the state has held a hearing and solicited comments before adopting the regulations and when the defects the plaintiffs complain of in the regulations are not ripe for court decision and are of the type that are more properly addressed through state administrative action, the injury is a speculative one, especially when the plaintiffs have not demonstrated any attempt to apply for a license under the regulations. If the plaintiffs apply for a license and are denied, they may pursue remedies through the state administrative procedures act. *Nagata v. Pohnpei*, 11 FSM R. 417, 418 (Pon. 2003).

§ 103. Filing and availability of regulations.

(1) Within ten days of adoption pursuant to the provisions of section 102 of this chapter, each agency shall file in the Office of the Registrar of Corporations, the office of each State Governor, and with the Clerks of Court of both the State and National courts, a certified copy of each regulation adopted by it, including all temporary and emergency regulations, all final adopted regulations, and all regulations existing on the effective date of this chapter. Each agency shall also provide a certified copy of each regulation adopted by it to the Speaker of the Congress, to the chairman of each standing committee thereof, and to the Legislative Counsel within ten days of its adoption.

(2) The Registrar of Corporations and the Clerk and assistant clerks of the Supreme Court shall keep a permanent register of regulations open to public inspection. Each such official shall provide, promptly upon request to him, copies of all regulations requested. Copies shall be provided without charge to agencies and officials of the National and State Governments and to other persons at reasonable prices to cover costs of copying and postage.

Source: PL 1-150 § 3; PL 7-92 § 3; PL 11-74 § 2.

Cross-reference: The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Case annotations: Regulations do not come into effect when they have not been filed with the Registrar of Corporations. Regulations cannot extend or limit the reach of the statute that authorizes it. *Braiel v. National Election Dir.*, 9 FSM R. 133, 138 (App. 1999).

§ 104. Taking effect of regulations.

Each regulation hereafter adopted is effective ten days after compliance with subsection (1) of section 102 of this chapter, except that:

(1) if a later date is required by a statute or specified in the regulation, the later date is the effective date;

(2) subject to applicable statutory provisions, an emergency regulation becomes effective immediately upon filing with the Registrar of Corporations, and the mailing, under registered cover, of copies thereof to the Speaker of the Congress, the chairman of each standing committee of Congress, the Legislative Counsel of Congress, each of the State Governors, and Clerks of Court in the Federated States, or at such later date as the regulation may provide. The President's statement setting forth the circumstances which necessitated the emergency regulation shall be filed with the regulation. The agency shall take appropriate measures to make emergency regulations known to the persons who may be affected by them.

Source: PL 1-150 § 4; PL 11-74 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress and the Legislative are found in title 3 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 105. Petition for adoption, amendment, or repeal of regulations.

Any interested person may petition an agency requesting the adoption, amendment, or repeal of a regulation. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial or shall initiate regulation making proceedings in accordance with this chapter.

Source: PL 1-150 § 5.

§ 106. Petition for advisory opinions.

Any interested person may petition an agency for advisory opinions as to the applicability of any statutory provision or of any regulation or order of the agency. Ruling disposing of petitions shall be issued within 30 days after

submission of a petition.

Source: PL 1-150 § 6.

§ 107. Petition for an agency order.

Any interested person requesting agency action may petition the agency for an order, which shall be issued within 30 days of the submission of the petition, unless the statute authorizing the agency action requires or expressly permits a decision or order in a different period of time.

Source: PL 1-150 § 7.

§ 108. Hearings.

(1) Any person aggrieved by agency action is entitled to a hearing before the highest administrative official of the department or office of which the agency is a part. Hearings shall be initiated by the submission of a petition to such administrative official.

(2) Hearings shall be conducted and orders shall be made in accordance with section 109 of this chapter; provided, however, that in the event and to the extent that any other law establishes another procedure for administrative review of the particular matter the provisions of such other law shall be controlling.

Source: PL 1-150 § 8.

Case annotations: Analysis of a claim of bias of an administrative decision-maker begins with a presumption that decision-makers are unbiased. The burden is on the challenger to show a conflict of interest or some other specific reason for disqualification. Specific facts, not mere conclusions, are required in order to rebut the presumption. *Heirs of Mongkeya v. Heirs of Mackwelung*, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

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. Where 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).

§ 109. Conduct of hearings.

(1) All parties and all persons who have an interest in the controversy who are known to the agency or hearing officer, and any person requesting individual notice shall be entitled to personal notice of all hearings. Persons entitled to notice of a hearing shall be timely informed of:

(a) the time, place, and nature of the hearing;

(b) the legal authority and jurisdiction under which the hearing is to be held;

(c) the particular sections of the statutes and regulations involved; and

(d) the issues presented.

(2) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(3) Unless precluded by law, disposition without a hearing may be made of any contested matter by stipulation, agreed settlement, consent, order, or default.

(4) The hearing shall be held within 30 calendar days after the submission of the petition, unless the petitioner requests a delay. At the hearing, the petitioner, the management official responsible for the agency action which is the subject matter of the controversy, and such other persons as the hearing officer shall permit, shall each have the right to be heard, to present evidence, to confront all adverse witnesses, and to be represented by counsel of his own choosing.

(5) At the hearing, technical rules of evidence shall not apply. At the discretion of the hearing officer, evidence may be taken stenographically or by recording machine. The hearing officer is authorized to issue subpoenas for witnesses and tangible evidence at the request of any party or on his own motion. Hearings shall be public except when the petitioner requests a closed hearing.

(6) Within 15 days after the conclusion of a hearing, the hearing officer shall prepare a full written statement of his findings of fact and his decision. The hearing officer shall forthwith transmit his findings of fact and decision to all parties. The decisions of the hearing officer shall constitute final agency disposition of the action.

(7) The hearing officer may:

(a) administer oaths and affirmations;

(b) rule on the admissibility of evidence;

(c) take dispositions or have dispositions taken when the ends of justice would be served;

(d) regulate the course of the hearing;

(e) hold conferences for the settlement or simplification of the issues by consent of the parties;

(f) dispose of procedural requests or similar matters;

(g) make or recommend orders or decisions in accordance with this chapter;

(h) take such other action as would serve the ends of justice.

(8) Except to the extent required for the disposition of ex-parte matters as authorized by law, the hearing officer may not consult a person or party or representative of a person or party on a fact in issue unless notice and opportunity are given to allow all parties to participate.

(9) The hearing officer may:

(a) communicate with other members of the agency, except as limited by subsection (8) of this section; and

(b) have the aid and advice of one or more personal assistants, and of the Attorney General and his staff if such assistance would not be in violation of subsection (8) of this section. Such assistants shall be constrained in the same manner as the hearing officer as provided in subsections (8) and (9) of this section.

(10) Any oral or documentary evidence may be received, but the hearing officer as a matter of policy shall provide for the exclusion of irrelevant, immaterial, unreliable, or unduly repetitious evidence. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Except as otherwise provided by law, privileges relating to evidence in the courts of the Trust Territory and Federated States shall apply in the conduct of hearings. A sanction may not be imposed or order or decision issued except on consideration of the whole record supported by and in accordance with substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Source: PL 1-150 § 9.

Cross-reference: The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Case annotations: 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 Intr. 339, 363 (Pon. 1983).

The FSM Rules of Civil Procedure do not apply to proceedings before administrative agencies. *Andrew v. FSM Social Sec. Admin.*, 12 FSM R. 101, 104 (Kos. 2003).

An agency action must be set aside when the action was without substantial compliance with the procedures required by law. *Ruben v. FSM*, 15 FSM R. 508, 516 (Pon. 2008).

When a letter does not set forth the agency's required findings of fact, it does not qualify as a full written statement of the hearing officer's findings of fact and his decision, and in the absence of a full written statement of findings of fact and an explanation of how the hearing officer arrived at his decision, the court has no reasonable basis upon which to review the agency action. Because the agency failed to substantially comply with the procedural requirement, the court will set aside its administrative action. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

Although a hearing officer has the discretion to decide which recording method to use stenographic or recording machine the hearing officer does not have the discretion to altogether fail to make a record of the hearing and its failure to substantially comply with this procedural requirement is yet another reason an agency action must be set aside. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

When an agency failed to substantially comply with the procedures required by law through the hearing officer's failure to prepare a full written statement of his findings of fact and his decision and the agency's failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

When there are discrepancies in the evidence, which result in a dispute of material facts, the court will decline an invitation to conduct a *de novo* review and conclude the matter by summary judgment. *Ruben v. FSM*, 15 FSM R. 508, 517 (Pon. 2008).

Under the common law rule known as the doctrine of primary jurisdiction, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the doctrine of primary jurisdiction in the hope that by remanding matters to an

administrative body, the administrative determination will obviate the need for further court action or will make possible a more informed and precise determination by the court. *Ruben v. FSM*, 15 FSM R. 508, 518 (Pon. 2008).

The doctrine of exhaustion of remedies requires that a potential plaintiff follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision before bringing the dispute to the attention of the judiciary. It is incumbent on parties to exhaust administrative procedures concerning their disputes as designated by applicable state law before coming to court, unless and until the state law is judged invalid. *Smith v. Nimea*, 16 FSM R. 186, 190 (Pon. 2008).

Closely related to the requirement of exhausting all administrative remedies before seeking judicial redress is the doctrine of *res judicata*, which bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits that has been affirmed on appeal or for which time for appeal has expired. Once a plaintiff availed himself of the administrative remedies available for claims under Pohnpei state law, he was obligated to exhaust those remedies as provided by Pohnpei state law before filing suit in the FSM Supreme Court. When the plaintiff failed to exhaust these remedies by failing to appeal the Pohnpei administrative decision, his claims for unpaid wages, overtime, wrongful termination and criminal penalties are barred as a matter of law. *Smith v. Nimea*, 16 FSM R. 186, 190 (Pon. 2008).

§ 110. Special provisions with regard to licensing.

(1) When a licensee has made timely and sufficient application for renewal of any existing license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency.

(2) Except in cases of willful misconduct by a licensee, or except as otherwise provided by law, no revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gave written notice to the licensee of facts or conduct which warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the President finds that the public health, safety, or welfare requires emergency summary suspension of a license, suspension may be ordered. In such case, the licensee shall be entitled to a prompt hearing in accordance with sections 108 and 109 of this chapter.

Source: PL 1-150 § 10.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: When the Secretary denied an application for a foreign investment permit without delivering notice of his action, made no statement of the reasons in support of his denial, and failed to report to the President, the decision was made without substantial compliance with the procedures required by law and was therefore unlawful. *Michelsen v. FSM*, 5 FSM R. 249, 254-55 (App. 1991).

§ 111. Judicial review of contested cases.

(1) This section applies, according to the provisions hereof, except to the extent that statutes enacted by the Congress of the Federated States of Micronesia explicitly limit judicial review.

(2) A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the Supreme Court of the Federated States of Micronesia. The Court shall conduct a *de novo* trial of the matter and may receive in evidence any or all of the record from the administrative hearing that is stipulated to by the parties.

(3) To the extent necessary to decision and when presented, the reviewing Court shall decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability

of the terms of an agency action. The reviewing Court shall:

(a) compel agency action unlawfully withheld or unreasonably delayed; and

(b) hold unlawful and set aside agency actions and decisions found to be:

(i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(ii) contrary to constitutional right, power, privilege, or immunity;

(iii) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights;

(iv) without substantial compliance with the procedures required by law; or

(v) unwarranted by the facts.

Source: PL 1-150 § 11; PL 7-92 § 4.

Cross-reference: The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendars, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations:

Administrative Law—Judicial Review

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court. The reviewing court shall hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. *Ruben v. FSM*, 15 FSM R. 508, 513 (Pon. 2008).

It is inappropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional where the administrative steps essential for review by the court of employment terminations have not yet been completed. 52 F.S.M.C. 157. *Suldan v. FSM (I)*, 1 FSM R. 201, 202 (Pon. 1982).

An employee has not shown that trying to obtain relief for unpaid wages through the administrative process would have been futile when the only evidence is the Director of Administrative Services' letter that applied only to employees in another department whose paychecks were not processed since there is no evidence that funds were not available to pay employees in the employee's department or that liability would be denied for any just claim for unpaid wages on the ground no funding was then available, especially since a claimed inability to pay is not a defense to liability. Thus, whether the state had funds to pay has no bearing on whether it is liable for payment. *Weriey v. Chuuk*, 16 FSM R. 329, 332 (Chk. 2009).

Exhaustion of administrative remedies is ordinarily a prerequisite for judicial jurisdiction. This rule is a wholesome one and an aid to the

proper administration of justice since it prevents the transfer to courts of duties imposed by law on administrative agencies. *Weriey v. Chuuk*, 16 FSM R. 329, 332 (Chk. 2009).

An appeal from an administrative agency must be started within the established statutory time period. This has the salutary effect of permitting resolution by the administrative agency, which may either satisfy the aggrieved party or mollify his concerns, thus conserving scarce judicial resources. The only exception to the requirement to exhaust this remedy first is if to do so would be futile. *Sipenuk v. FSM Nat'l Election Dir.*, 15 FSM R. 1, 5 n.2 (App. 2007).

When a state administrative agency asks that the FSM Supreme Court not exercise jurisdiction in a case because the case involves a question about land, and land issues are best (and traditionally) left to the state court, but when a deeper analysis reveals that the case is not fundamentally a land case, but rather one in which the court is being asked to review an agency's action and determine whether that action was lawful from an administrative or procedural point of view, not a substantive one, the question presented is not whether the plaintiff is entitled to the assignment of the lease in question, but rather whether the board possessed the authority to reconsider its decision and, if so, did it do so in a manner that recognized plaintiff's rights under the FSM Constitution. In such a case, the FSM Supreme Court does not lack subject matter jurisdiction, and the plaintiff's complaint will not be dismissed. *Asumen Venture, Inc. v. Board of Trustees*, 12 FSM R. 84, 90 (Pon. 2003).

When, through the discovery process, further briefing, and a trial, a plaintiff could show that an agency acted in a manner that violated its statutory duties and when its motion to dismiss fails to set forth the applicable laws and administrative rules that dictate how it conducts business, the court is disinclined to decide as a matter of law that its actions were authorized, lawful, and procedurally correct and will allow the claim to remain, allow further briefing and discovery, and then entertain a motion for summary judgment. *Asumen Venture, Inc. v. Board of Trustees*, 12 FSM R. 84, 91 (Pon. 2003).

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).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 526, 533 (Chk. 2011).

An unconstitutional statute may not be redeemed by voluntary administrative action. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 526, 533 (Chk. 2011).

Where a Public Land Authority has erred procedurally, but there is no suggestion of bad faith or substantive violations by the Authority, the FSM Supreme Court may appropriately employ the doctrine of primary jurisdiction to remand the public land issue to the Authority for its decision. *Etpison v. Perman*, 1 FSM R. 405, 429 (Pon. 1984).

The FSM Supreme Court finds within the Administrative Procedures Act, 17 F.S.M.C. §§ 101-113, the necessary flexibility to expedite review of an administrative proceeding. *Olter v. National Election Comm'r*, 3 FSM R. 123, 128 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA's judicial review provisions are inapplicable to appeals from denial of such petitions. *Olter v. National Election Comm'r*, 3 FSM R. 123, 130 (App. 1987).

It is appropriate for courts to defer to a decision-maker when Congress has told the courts to defer or when the agency has a better understanding of the relevant law. *Olter v. National Election Comm'r*, 3 FSM R. 123, 133, 134 (App. 1987).

The FSM Supreme Court need not dwell upon the apparent conflicts between two lines of cases in the United States concerning the scope of judicial review of administrative actions, but should search for reconciling principles which will serve as a guide to court within the Federated States of Micronesia when reviewing agency decisions of the law. *Olter v. National Election Comm'r*, 3 FSM R. 123, 132 (App. 1987).

If an agency decision is a considered judgment arrived at on the basis of hearings, a full record, and careful reflection, courts are more likely to rely on the knowledge and judgment of the agency and to restrict the scope of judicial review. *Olter v. National Election Comm'r*, 3 FSM R. 123, 134 (App. 1987).

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. *Semes v. FSM*, 4 FSM R. 66, 71 (App. 1989).

The Administrative Procedure Act judicial review provisions do not apply to statutes enacted by the Congress of the Federated States of Micronesia to the extent that those statutes explicitly limit judicial review. *Semes v. FSM*, 4 FSM R. 66, 72 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. *Semes v. FSM*, 4 FSM R. 66, 72 (App. 1989).

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the meaning of the statute. *Michelsen v. FSM*, 3 FSM R. 416, 421 (Pon. 1988).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. 32 F.S.M.C. 215. *Michelsen v. FSM*, 5 FSM R. 249, 252-53 (App. 1991).

The standard of review of an agency decision is to determine whether the action was lawful. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. *Kony v. Mori*, 6 FSM R. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. *Kony v. Mori*, 6 FSM R. 28, 30 (Chk. 1993).

Judicial review of agency actions must first be sought in the trial division unless there is a specific statute which provides otherwise. *Moroni v. Secretary of Resources & Dev.*, 6 FSM R. 137, 138-39 (App. 1993).

The Administrative Procedures Act provides for judicial review of administrative acts and applies to all agency actions unless explicitly limited by Congressional statute. It mandates the court to "conduct a de novo trial of the matter," and to "decide all relevant questions of law and fact." *Moroni v. Secretary of Resources & Dev.*, 6 FSM R. 137, 138 (App. 1993).

The public policy against extended litigation does not mandate a direct appeal to the appellate division from an agency action since the statutory scheme unambiguously requires pursuit of remedies in the trial division first, and the trial division proceeding may resolve the matter. *Moroni v. Secretary of Resources & Dev.*, 6 FSM R. 137, 139 (App. 1993).

§ 112. Appeals.

An aggrieved party may obtain a review of any final judgment of the Trial Division of the Supreme Court under this chapter by appeal to the Appellate Division of the Supreme Court. The appeal shall be taken as in other civil cases, and the judgment be reviewed by considering the finding of the Trial Division in light of whether it was justified by substantial evidence of record.

Source: PL 1-150 § 12; PL 7-92 § 5.

Cross-reference: The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendars, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

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

It is standard appellate procedure (as used in judicial review of administrative decisions) to file briefs and hear oral argument on them. This permits the appellate parties to argue errors of law or other deficiencies in the proceeding below and to direct the court's attention to

those parts of the record that support their contentions. Briefs are not evidence, and a hearing on them is not a trial. *Anton v. Cornelius*, 12 FSM R. 280, 286-87 (App. 2003).

An appeal from a Social Security Board decision will be determined on the record below and not on a trial *de novo* because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. *Clarence v. FSM Social Sec. Admin.*, 12 FSM R. 635, 636 (Kos. 2004).

By failing to respond to Social Security's motion *in limine* that seeks to preclude the plaintiff from adducing any further evidence on appeal beyond that which is part of the record of proceedings before the Social Security Board, the plaintiff has not shown that there were reasonable grounds for failure to adduce competent, material, and substantial evidence before the Board and that this evidence should be (but is not) part of the record of the proceedings, and thus the motion will be granted. *Clarence v. FSM Social Sec. Admin.*, 12 FSM R. 635, 637 (Kos. 2004).

§ 113. Other authorized authority subject to this chapter.

The provisions of this chapter shall apply to all agency action unless Congress shall by law hereafter provide otherwise.

Source: PL 1-150 § 13.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at http://www.fsmcongress.fm/.