DIGEST

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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 Intrm. 201, 205 (Pon. 1982).

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

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. 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 Intrm. 339, 362-63 (Pon. 1983).

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

Basic notions of fair play, as well as the Constitution, require that Public Land Authority decisions be made openly and after giving appropriate opportunity for participation by the public and interested parties. Etpison v. Perman, 1 FSM Intrm. 405, 420-21 (Pon. 1984).

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

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

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 Intrm. 92, 99 (Kos. S. Ct. Tr. 1987).

When the charges of prejudice of an administrative decision-maker are too conclusory, vague, and lacking in specificity, then they do not bring into question the presumption of impartiality. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 92, 100 (Kos. S. Ct. Tr. 1987).

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 92, 100 (Kos. S. Ct. Tr. 1987).

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 402 (Kos. S. Ct. Tr. 1988).

In a nation constitutionally committed to attempt to provide legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous,

vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney the opportunity to practice law in that state. Carlos v. FSM, 4 FSM Intrm. 17, 24 (App. 1989).

In general, to the extent that the Financial Management Regulations are consistent with the Financial Management Act, such uniform standards and procedures serve to prevent misappropriation and expenditures in excess of budgetary allowances. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 85 (Pon. 1991).

A Financial Management Regulation that bears no reasonable relationship to the fiscal accounting and management objectives of the Financial Management Act is in excess of the statutory authority granted to the Secretary of Finance. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 86-87 (Pon. 1991).

The Secretary of Finance lacks the authority to terminate administratively the fiscal year prior to its lawful expiration period where such termination precludes the judiciary from making obligations during the entire fiscal year for which an appropriation is made. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 88 (Pon. 1991).

In implementing the provisions of the Financial Management Act the Secretary of Finance must disburse funds within 30 days of the submission of a payment request unless the withholding of payment approval is necessary to prevent the misappropriation or over-obligation of a specific appropriation. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 88 (Pon. 1991).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v. FSM, 5 FSM Intrm. 375, 377 (App. 1992).

Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 F.S.M.C. 301-02. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 69 (Pon. 1993).

Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be "reasonable" as with recreational permits. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

The state cannot raise as a defense a plaintiff's failure to comply with its administrative procedures for claims when denial of opportunity for administrative relief is one of the injuries the plaintiff complains of. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 119-20 (Pon. 1993).

Where a state law contains potentially conflicting provisions regarding administrative procedures claimants must follow, the decision of a claimant to follow one provision but not the other so as to preserve her right to bring suit on a claim is reasonable and does not constitute a basis for dismissing the action. Abraham v. Lusangulira, 6 FSM Intrm. 423, 425-26 (Pon. 1994).

It is incumbent on parties to follow administrative procedures concerning their disputes as designated by applicable state law before coming to court unless and until the state law is judged invalid. Abraham v. Lusangulira, 6 FSM Intrm. 423, 426 (Pon. 1994).

A regulation cannot impermissibly extend the reach of the statute that authorizes it. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

It is an impermissible extension of the reach of the statute for the executive service regulation to define abandonment of public office as absent without authorization for two weeks. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

Lack of structure in a statute can be remedied by agency regulations that support, rather than distort, the statutory language of the legislature. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

Congress may constitutionally authorize by statute administrative agencies to perform many different investigatory functions, among them the auditing of books and records, the issuance of subpoenas requiring the disclosure of information relevant to the agency's functions, and requiring the sworn testimony of

witnesses. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 141-42 (Pon. 1995).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79, 92-93 (Pon. 1997).

When a court case containing a count for trespass and injunctive relief raises the issue of who holds title to the land in question, the case will be transferred to the Chuuk Land Commission for adjudication of the parties' claims to ownership pursuant to its administrative procedure. Choisa v. Osia, 8 FSM Intrm. 567, 568 (Chk. S. Ct. Tr. 1998).

Administrative agencies in the form of Registration Teams and the Land Commission are created and an administrative procedure are provided for the purpose of determining the ownership of land and the registration thereof. Choisa v. Osia, 8 FSM Intrm. 567, 568 (Chk. S. Ct. Tr. 1998).

In some circumstances, two remedies may be available to the same party for the enforcement of the same right, one in the judicial and the other in the administrative forum. Mark v. Chuuk, 8 FSM Intrm. 582, 583 (Chk. S. Ct. Tr. 1998).

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 Intrm. 582, 583-84 (Chk. S. Ct. Tr. 1998).

Generally, the validity of a regulation depends on whether the administrative agency had the power to adopt the particular regulation. The regulation must be within the matter covered by the enabling statute. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

A regulation, valid when promulgated, becomes invalid upon the later enactment of another statute which is in conflict with the regulation. However, an administrative regulation will not be considered as having been impliedly invalidated by a subsequent act of the legislature unless the regulation and the later law are irreconcilable, clearly repugnant and inconsistent that they cannot have concurrent operation. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

Administrative regulations that are inconsistent or out of harmony with the statute or that conflict with the statute are invalid or void, and the court not only may, but it is their obligation to strike down such regulations. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

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

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 Intrm. 133, 138 (App. 1999).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the

Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM Intrm. 446, 447 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 549 (Kos. S. Ct. Tr. 2002).

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 Intrm. 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 Intrm. 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 Intrm. 258, 261 (Kos. S. Ct. Tr. 2002).

It was arbitrary and an abuse of discretion for the state to accept an irrevocable letter of credit as security for a transaction from one company and reject the same irrevocable letter of credit from another company. Nagata v. Pohnpei, 11 FSM Intrm. 265, 272 (Pon. 2002).

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM Intrm. 311, 316-17 (App. 2003).

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 Intrm. 417, 418 (Pon. 2003).

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

Proposed regulations, that have not been adopted, do not have the force of law. Mackwelung v. Robert, 12 FSM Intrm. 161, 162 (Kos. S. Ct. Tr. 2003).

The Financial Management Regulations, effective June 14, 1999, apply to the obligation and disbursement of funds from a lump sum appropriation for the purpose of funding health, education, infrastructure and other public projects. FSM v. Este, 12 FSM Intrm. 476, 481 (Chk. 2004).

– Administrative Procedure Act

The FSM Supreme Court finds within the Administrative Procedure 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 Intrm. 123, 128 (App. 1987).

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 Intrm. 123, 129 (App. 1987).

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 Intrm. 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 Intrm. 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 Intrm. 123, 131 (App. 1987).

A decision by the Secretary denying applicant a permit to practice law in Yap is an agency decision within the provisions of the Administrative Procedure Act. Michelsen v. FSM, 5 FSM Intrm. 249, 253 (App. 1991).

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 Intrm. 249, 254-55 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the Federated States of Micronesia, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM Intrm. 249, 256 (App. 1991).

– Judicial Review

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 Intrm. 201, 202 (Pon. 1982).

The National Public Service System Act plainly manifests a congressional intention that, where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

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

Intrm. 405, 429 (Pon. 1984).

Unless restricted by law, we must presume that this court has jurisdiction to review final administrative or agency actions. There is reviewability except where: 1) statutes preclude judicial review; or 2) administrative/agency action is committed to administrative/agency discretion by law. Amor v. Pohnpei, 3 FSM Intrm. 28, 29 (Pon. S. Ct. Tr. 1987).

When subsection 3(e) section 27 of the State Public Service System Act of 1981 is read in conjunction with subsection 3(f), it becomes clear that the Legislature had not intended to limit the right to judicial review and that the statute does not preclude the court from reviewing any decision of the Personnel Review Board. Amor v. Pohnpei, 3 FSM Intrm. 28, 30 (Pon. S. Ct. Tr. 1987).

There is no provision in the Public Service Act nor in the Public Service System Regulation that establishes a time limit for seeking judicial review of agency action. For this reason, the court adopts the six-year statute of limitations established in 6 TTC 305 and holds that the petition for judicial review was filed in a timely manner. Amor v. Pohnpei, 3 FSM Intrm. 28, 33 (Pon. S. Ct. Tr. 1987).

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 Intrm. 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 Intrm. 123, 130 (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 Intrm. 123, 132 (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 Intrm. 123, 133, 134 (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 Intrm. 123, 134 (App. 1987).

Under Kosrae state statute KC 11.614, which says appeals will be heard "on the record" unless "good cause" exists for a trial of the matter, the court does not have statutory guidance as to the standard to be used in reviewing the Land Commission's decision and therefore, in reviewing the commission's procedure and decision, normally should merely consider whether the commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 398 (Kos. S. Ct. Tr. 1988).

That a land commission's determination is not sufficiently supported by either reasoning or evidence furnishes "good cause" to permit the reviewing court to conduct its own evidentiary proceeding. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 398 (Kos. S. Ct. Tr. 1988).

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when

witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 401 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission's determination of ownership of certain lands called Limes, in Lelu, parcel No. 050-K-00, made on July 21, 1985, was sound and fair and will therefore be affirmed by the court. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM Intrm. 465, 468 (Kos. S. Ct. Tr. 1988).

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 Intrm. 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 Intrm. 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 Intrm. 66, 72 (App. 1989).

The Kosrae State Court in reviewing appeals from the Executive Service Appeals Board is empowered to overturn or modify the Board's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing factual determinations made by the Board. Palik v. Executive Serv. Appeals Bd., 4 FSM Intrm. 287, 289 (Kos. S. Ct. Tr. 1990).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. Michelsen v. FSM, 5 FSM Intrm. 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 Intrm. 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 Intrm. 249, 254 (App. 1991).

Strong policy considerations favor terminating disputes and upholding the finality of a decision when the party attempting to appeal has failed to act in timely fashion. Charley v. Cornelius, 5 FSM Intrm. 316, 317-18 (Kos. S. Ct. Tr. 1992).

When a time requirement has been statutorily established courts are generally without jurisdiction to hear an appeal authorized by statute unless the appeal is filed within the time prescribed by statute. Charley v. Cornelius, 5 FSM Intrm. 316, 318 (Kos. S. Ct. Tr. 1992).

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 Intrm. 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 Intrm. 28, 30 (Chk. 1993).

The Administrative Procedures Act provides for judicial review of administrative acts and applies to all

agency actions unless explicitly limited by a 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 Intrm. 137, 138 (App. 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 Intrm. 137, 138-39 (App. 1993).

The public policy against extended litigation does not mandate and 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 Intrm. 137, 139 (App. 1993).

The Chuuk State Supreme Court has constitutional jurisdiction to review the actions of any state administrative agency, and decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action. Robert v. Mori, 6 FSM Intrm. 178, 179 (Chk. S. Ct. Tr. 1993).

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

The judiciary must reject administrative constructions which are contrary to clear legislative intent because, although courts should, where appropriate, defer to an agency's authorization, there are limits to that deference. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. Wiliander v. Mallarme, 7 FSM Intrm. 152, 158 (App. 1995).

Because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division, under 67 TTC 115, exercises appellate review of Land Commission decisions. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 377 (Chk. S. Ct. Tr. 1996).

The Chuuk State Supreme Court has limited review of administrative agency decisions and cannot act as a finder of fact unless it grants a trial de novo. A trial de novo is only authorized in reviewing an administrative hearing where the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 377-78 (Chk. S. Ct. Tr. 1996).

In reviewing decisions of administrative agencies the Chuuk State Supreme Court shall review the whole record and due account shall be taken of the rule of prejudicial error. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 378 (Chk. S. Ct. Tr. 1996).

The Chuuk State Supreme Court will not overturn factual findings of the Land Commission that turn on witness credibility because such findings are not clearly erroneous. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 378 (Chk. S. Ct. Tr. 1996).

Exhaustion of administrative remedies before suing in court is not required when it would be futile for a plaintiff to pursue an administrative remedy. Chuuk v. Secretary of Finance, 7 FSM Intrm. 563, 566 n.4 (Pon. 1996).

Although not listed in Civil Rule 8(c) failure to exhaust administrative remedies is an affirmative defense.

Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 618 (App. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 35 (Kos. S. Ct. Tr. 1997).

On appeal the court should not substitute its judgment for those well-founded findings of the land commission, but questions of law are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 35 (Kos. S. Ct. Tr. 1997).

It is axiomatic that determining the legal implication of a different case is a question of law, and on appeal questions of law presented to a state agency are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 38 (Kos. S. Ct. Tr. 1997).

It is not necessary to exhaust one's administrative remedies before filing suit when to do so would be futile. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 115 (Chk. 1997).

It is not necessary to exhaust one's administrative remedies before filing suit when to do so would be futile. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 115 (Chk. 1997).

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

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998).

In reviewing appeals from the Executive Service Appeals Board, the Kosrae State Court is empowered to overturn or modify the ESAB's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing the ESAB's factual determinations. If there is any factual basis for the ESAB's decision, it will be upheld, assuming no other violation or law or regulation. Langu v. Kosrae, 8 FSM Intrm. 427, 432 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court cannot substitute its judgment for that of the Executive Service Appeals Board, but in reviewing the ESAB's findings it may examine all of the evidence in the record in determining whether the factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Langu v. Kosrae, 8 FSM Intrm. 427, 435 (Kos. S. Ct. Tr. 1998).

Employee grievances were subject to judicial review by the Kosrae State Court, following the completion of certain administrative procedures, specifically review by the Executive Service Appeals Board. The court may reverse or modify ESAB's decision only if finds a violation of law or regulation. Langu v. Kosrae, 8 FSM Intrm. 455, 457, 458 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court does not have jurisdiction to review employee grievances of persons who did not first comply with the statutorily required administrative procedure. Langu v. Kosrae, 8 FSM Intrm. 455, 457 (Kos. S. Ct. Tr. 1998).

The Chuuk Judiciary Act of 1990, Chk. S.L. No. 190-08, states in part that the reviewing court shall declare unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. Mathew v. Silander, 8 FSM Intrm. 560, 563-64 (Chk. S. Ct. Tr. 1998).

When an administrative remedy is provided by statute, relief ordinarily must not only be sought initially from the appropriate administrative agency but such remedy usually must be exhausted before a litigant may resort to the courts. Choisa v. Osia, 8 FSM Intrm. 567, 569 (Chk. S. Ct. Tr. 1998).

The rule requiring the exhaustion of administrative remedies is a wholesome one and an aid to the proper administration of justice. One of the important reasons, is to prevent the transfer to courts of duties imposed by law on administrative agencies. Choisa v. Osia, 8 FSM Intrm. 567, 569 (Chk. S. Ct. Tr. 1998).

The doctrine of exhaustion of administrative remedies requires that no one is entitled to bring a land dispute to court until the Land Commission has been given a chance to decide the case because the Land Commission is the proper forum for the determination of land ownership. Choisa v. Osia, 8 FSM Intrm. 567, 569 (Chk. S. Ct. Tr. 1998).

When a plaintiff seeks to establish a claim in a court action that is identical to the claim he already established in administrative proceedings, a court judgment could do no more, and payment of the claim can only be lawfully done by legislative appropriation. Mark v. Chuuk, 8 FSM Intrm. 582, 583 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. The Judiciary Act of 1990, Chk. 190-08, § 18, provides that a person adversely affected or aggrieved by an agency action, is entitled to judicial review thereof. Mark v. Chuuk, 8 FSM Intrm. 582, 584 (Chk. S. Ct. Tr. 1998).

A person who has not been adversely affected or aggrieved by administrative action cannot seek court review when his rights were fully protected by his successful administrative claim. His remedy is not with the judiciary, but with the Legislature for an appropriation to pay his claim. Mark v. Chuuk, 8 FSM Intrm. 582, 584 (Chk. S. Ct. Tr. 1998).

Administrative procedures, where applicable and valid, must be followed before seeking judicial disposition of matter. It is incumbent on parties to follow administrative procedures concerning their disputes as designated by applicable state law before coming to court unless and until the state law is judged invalid. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

When the administrative steps essential for court review of employment terminations have not yet been completed, the court cannot review the termination. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

Since no appeal process for grievances existed from June 1997 to February 1998, during which time the complaint was filed, it would have been futile for the plaintiff to follow administrative procedures regarding her grievance. Exhaustion of administrative remedies before suing in court is not required when it would be futile for a plaintiff to pursue an administrative remedy. Abraham v. Kosrae, 9 FSM Intrm. 57, 60-61 (Kos. S. Ct. Tr. 1999).

There are no provisions in Title 18 that prohibit an the filing of a civil action by non-employee for a grievance based upon facts which occurred during his or her employment with the Kosrae state government. For employees, Title 18 provides that an administrative procedure must be followed first, as prescribed by their branch heads. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

Disciplinary actions, suspensions, demotions and dismissals, taken in conformance with Title 18 are in no case subject to review in the courts until the administrative remedies have been exhausted. Grievances are not disciplinary actions. Title 18 does not provide any limitations on the court's review of grievances or grievance appeals. There is no limitation of judicial review with respect to grievances. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

Under Title 18, there is no limitation on the court's jurisdiction to hear claims based upon a grievance filed by a former employee of the Executive Branch. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

An appeal from the Executive Service Appeals Board's decision to the Kosrae State Court was available for state employee grievances. The Kosrae State Court trial division's jurisdiction to reverse or modify a finding of the ESAB was limited under Kosrae State Code section 5.421(2) to violations of law or regulation. In this regard, the state court acted as an appellate tribunal. Kosrae v. Langu, 9 FSM Intrm. 243, 246 & n.2 (App. 1999).

On an appeal from the Executive Service Appeals Board's decision it was not within the authority of the Kosrae State Court to make new factual determinations in light of the express stricture in section 5.421(2) that the state court could reverse or modify an ESAB finding only if it finds a violation of law or regulation. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

Although an inquiry whether state employees were not exempt, but were permanent employees under section 5.409, is fact driven – the court or other administrative body must determine material facts before it can apply the statute to those facts – the final determination whether an individual falls within a specific category defined by statute is necessarily one of law, not fact. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Kosrae v. Langu, 9 FSM Intrm. 243, 250 (App. 1999).

When an administrative procedure and ensuing appeal has afforded parties complete relief for their grievances pursuant to statutes and regulations and the parties' constitutional claims are not the basis for any separate or distinct relief, the constitutional issue need not be reached. Kosrae v. Langu, 9 FSM Intrm. 243, 250-51 (App. 1999).

A person, including a corporation, who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to judicial review. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 365 (Yap 2000).

Rejection of a contractor's bid on the basis it was incomplete is a final administrative determination which confers on the bidder the right to judicial review. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 365 (Yap 2000).

Under Yap law, proceedings for judicial review of an agency decision may be instituted by filing a petition in a court of competent jurisdiction within thirty days after the issuance of the decision to be reviewed. The agency may grant, or the court may order, a stay of the administrative agency's final decision on appropriate terms. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 365 (Yap 2000).

Judicial review of an agency decision is confined to the record, although the court may receive briefs, hear oral argument, and receive supplemental evidence. The court cannot substitute its judgment for that of the agency on factual questions and must give appropriate weight to the agency's experience, technical competence, and specialized knowledge. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 365 (Yap 2000).

When there was no formal hearing requiring transcription, the court may shorten the time before oral

argument on judicial review of an agency decision. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 366 (Yap 2000).

When the court has scheduled oral argument for judicial review of an agency decision, when the state is facing time constraints, and when the aggrieved party, although it has presented a fair question for determination on the record, has not demonstrated to the court's satisfaction that it is so likely to prevail, the court will exercise its discretion not to enter a stay or a TRO. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 366 (Yap 2000).

The Yap State Code provides that one who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case shall be entitled to judicial review. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 394, 395 (Yap 2000).

In an appeal from an administrative agency under 10 Y.S.C. 164, judicial review is be confined to the record, and upon any party's request, the court will receive briefs and hear oral argument, and the court also may, in it discretion, receive any evidence necessary to supplement the record. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 394-95 (Yap 2000).

An administrative agency proceeding in which the legal rights, duties or privileges of a party were determined is a "contested case" that may be subject to judicial review. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 395 (Yap 2000).

The standard for judicial review of an agency decision under 10 Y.S.C. 165 is the court may reverse or modify the agency's decision, or remand the case for further proceedings if the petitioner's substantial rights have been prejudiced because the agency's decision is a) in violation of applicable constitutional or statutory provisions; b) in excess of the agency's statutory authority; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of the reliable, probative and substantial evidence in the whole record; or f) arbitrary, capricious, or characterized by abuse of discretion. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 396 (Yap 2000).

In judicial review of an agency decision the court may not substitute its judgment for that of the agency as to issues of fact, and the court shall give appropriate weight to the agency's experience, technical competence, and specialized knowledge. Hence, the deference paid to an agency's technical expertise is an implicit part of the abuse of discretion standard applied by a reviewing court. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 396 (Yap 2000).

A court must fully take into account the discretion that is typically accorded an official in the procurement agencies by statutes and regulations. Such discretion extends not only to the evaluation of bids submitted in response to a solicitation but also to the agency's determination with respect to the application of technical, and often esoteric, regulations to the complicated circumstances of individual procurement. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 396 (Yap 2000).

A reviewing court may not overturn a state agency's decision unless the challenger meets the heavy burden of showing that the decision had no rational basis or involved a clear and prejudicial violation of applicable statutes or regulations. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 396 (Yap 2000).

It is not for the court to second-guess the state's determination that a bidder's related experience was insufficient to qualify it as the lowest responsible bidder because a court has no warrant to set aside agency actions as arbitrary or capricious when those words mean no more than that the judge would have handled the matter differently had he been an agency member. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 404 (Yap 2000).

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency

action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

A court reviewing a land commission determination must have before it a full and complete record upon which the land commission's final decision on the parties' claims was based. An agency action is subject to *de novo* review when the agency action is adjudicative in nature and its fact finding procedures are inadequate. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 492 (Chk. S. Ct. Tr. 1999).

Not only is a full and complete record of the land commission's action needed for court review, but the Trust Territory Code requires that there be a full and complete record of any land commission determinations. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

Although the land commission may appoint a land registration team to conduct hearings and adjudicate the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

If the land commission approves the land registration team's report, either initially or after remand for further hearings, and issues a determination, it is the land registration team's record that will be subject to judicial review. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

Without a full and complete record of the land commission's determination, a reviewing court cannot conduct a fair and meaningful review of the land commission's actions. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 494 (Chk. S. Ct. Tr. 1999).

When the land commission's determination provides no explanation as to why it apparently rejected the land registration team's determination or how it reached its own determination, when the absence of a complete record makes it impossible for the court to review the land commission's determination, and when even if the court were to review the matter giving due regard for the rule of prejudicial error, the land commission's decision would be set aside for its failure to observe procedures required by the Trust Territory Code, the court, given the land commission's failure to prepare a complete record and the time elapsed, will conduct a *de novo* review of the land commission action. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 494-95 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court will not set aside a Land Commission determination on the ground that members of the land registration team were not residents of Weno when that issue was not raised and argued before the Land Commission. O'Sonis v. Sana, 9 FSM Intrm. 501, 502 (Chk. S. Ct. Tr. 2000).

Jurisdiction of the Chuuk State Supreme Court trial division in appeals from the Land Commission is limited to a review of the Land Commission record and is not a trial de novo. O'Sonis v. Sana, 9 FSM Intrm. 501, 502-03 (Chk. S. Ct. Tr. 2000).

The Chuuk State Supreme Court applies the "clearly erroneous" standard of review when considering the decisions of administrative agencies. O'Sonis v. Sana, 9 FSM Intrm. 501, 503 (Chk. S. Ct. Tr. 2000).

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 agency's knowledge and judgment and to restrict the scope of judicial review. O'Sonis v. Sana, 9 FSM Intrm. 501, 503 (Chk. S. Ct. Tr. 2000).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 9 FSM Intrm. 523, 524-25 (Kos. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Kufus v. Palsis, 9 FSM Intrm. 526, 527 (Kos. S. Ct. Tr. 2000).

With respect to review of factual findings, the court, when reviewing a Land Commission decision, normally should merely consider whether the Land Commission has reasonably assessed the evidence presented. On appeal the court should not substitute its judgment for those well-founded Land Commission findings because it is primarily the Land Commission's task, and not the reviewing court's, to assess the witnesses' credibility and resolve factual disputes, since the Land Commission, not the court, was present during the testimony. Heirs of Kufus v. Palsis, 9 FSM Intrm. 526, 527 (Kos. S. Ct. Tr. 2000).

When the Land Commission's findings with respect to the Determination of Ownership are based upon substantial evidence in the record of the formal hearing and the Land Commission reasonably assessed the evidence that was presented at the hearing and has properly resolved the legal issues presented its decision will be affirmed. Heirs of Kufus v. Palsis, 9 FSM Intrm. 526, 528 (Kos. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, considers whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Taubert v. Talley, 9 FSM Intrm. 541, 542 (Kos. S. Ct. Tr. 2000).

On appeal the court should not substitute its judgment for those well-founded findings of the Land Commission, but questions of law are reserved to the court and the court must consider whether the Land Commission has reasonably assessed the evidence presented. Taubert v. Talley, 9 FSM Intrm. 541, 542 (Kos. S. Ct. Tr. 2000).

The Land Commission's finding of fact that the appellee obtained title to the land through a land exchange was based upon a reasonable assessment of the evidence and was not clearly erroneous when supported by testimony of a witness who was cross-examined on other points of his testimony, but was not cross-examined about the land exchange, because an inference of the failure to cross-examine about the land exchange testimony was the opponent's acceptance of those facts testified to by the witness. The Land Commission's decision will thus be affirmed. Taubert v. Talley, 9 FSM Intrm. 541, 543 (Kos. S. Ct. Tr. 2000).

A court will not dismiss a case for failure to exhaust administrative remedies when to do so would require the plaintiff to pursue relief through an unconstitutional procedure. Udot Municipality v. FSM, 9 FSM Intrm. 560, 563 (Chk. 2000).

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court. The court shall conduct a de novo trial of the matter, and shall decide all relevant questions of law and fact. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM Intrm. 24, 28 (Pon. 2001).

The Chuuk State Election Commission must meet within three days after certification to consider any complaints. A contestant is justified in considering the Commission's failure to meet within its deadline as a denial of his complaint, and is thus entitled to file a notice of appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153-54 (Chk. S. Ct. App. 2001).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 154 (Chk. S. Ct. App. 2001).

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate

division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 155 (Chk. S. Ct. App. 2001).

The election statute does not contain a deadline to file an election contest appeal from the Chuuk State Election Commission. The only deadlines in the statute that relate to the court are that the court must "meet within 7 days of its receipt of a complaint to determine the contested election," and that the court must "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 157 (Chk. S. Ct. App. 2001).

An appellee's cross appeal in an election case will be dismissed when there was no evidence that he had ever raised the issue before either the tabulating committee or the Election Commission. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 158 (Chk. S. Ct. App. 2001).

The absence of a filing deadline in the election statute means that there is no statutory jurisdictional time bar to an appeal, but that any election contest party who appeals within seven days of when the declared winning candidates are to take office runs the risk that the court will either not meet before its authority to decide the appeal expires or that court may be unable to conclude the proceedings and make its decision before its authority to decide the appeal expires. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 158 (Chk. S. Ct. App. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

On appeal the Kosrae State Court should not substitute its judgment for those well-founded findings of the Land Commission because it is primarily the task of the Land Commission, and not the reviewing court, to assess the witnesses' credibility and resolve factual disputes, since it is the Land Commission, and not the court, who is present during the testimony. Therefore, the Kosrae State Court should review the Land Commission record and determine whether the Land Commission reasonably assessed the evidence presented, with respect to factual issues. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

A Land Commission opinion must reflect a proper resolution of the legal issues. If it does not, the decision must be set aside. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 165 (Kos. S. Ct. Tr. 2001).

The Trust Territory Public Service System Regulations did not require an employee grievance be heard by the Personnel Board in the formal grievance procedure prior to filing suit in court on that grievance. There was no limitation on judicial review of grievances imposed by the Public Service System Regulations, as long as the informal grievance procedure was completed. Skilling v. Kosrae, 10 FSM Intrm. 448, 452 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will 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, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 489 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of judicial review of final decisions made under the State Public

Service System is that the court will 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 court is authorized to compel, or hold unlawful and set aside agency actions. Jackson v. Kosrae, 11 FSM Intrm. 197, 199 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Taulung v. Jack, 11 FSM Intrm. 345, 347 (Kos. S. Ct. Tr. 2003).

On appeal, the Kosrae State Court may not substitute its judgment for those Land Commission findings which are based upon a reasonable assessment of the evidence. Taulung v. Jack, 11 FSM Intrm. 345, 348 (Kos. S. Ct. Tr. 2003).

When the Land Commission's finding a witness with no interest in the land more credible was based upon a reasonable assessment of the evidence presented at the hearing, the court will not substitute its judgment for the findings of the Land Commission. Taulung v. Jack, 11 FSM Intrm. 345, 348 (Kos. S. Ct. Tr. 2003).

The Land Commission was not clearly erroneous in accepting hearsay testimony of a dead man's statements in its findings when there is no "deadman's statute" in Kosrae and it was based upon a reasonable assessment of the evidence presented at the hearing, the court will not substitute its judgment for the Land Commission's. Taulung v. Jack, 11 FSM Intrm. 345, 348-49 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Land Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 421 (Kos. S. Ct. Tr. 2003).

When the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the Determination of Ownership as void and remanded to Kosrae Land Court for further proceedings. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 423 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003).

If the Chuuk State Supreme Court determines that a de novo review of an appeal from Land Commission is appropriate, the plaintiff must prove his case by a preponderance of the evidence, and the court may make its own findings of fact based on the total record in this case, but if the court does not conduct a de novo review of the case, it merely determines whether the Land Commission's decision was arbitrary and capricious, and whether the facts as found by the Land Commission were clearly erroneous. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 588-89 (Chk. S. Ct. Tr. 2003).

When no detailed findings of fact are included either in the Land Commission Registration Team's two decisions or in the full Land Commission's one decision; when the full Land Commission gave no reason for reversing the Registration Team's determinations and supports its decision with nothing but a mere conclusion; when the newly-discovered Land Commission hearing transcripts do not assist the court in determining how the Land Commission reached its decision; and when there is no indication in the Land Commission record that witness testimony was taken under oath, or that the admitted exhibits were properly authenticated and identified and the exhibits were not contained within the record, there was no basis for the court to review the Land Commission's actions, and a trial de novo was necessary. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 589 (Chk. S. Ct. Tr. 2003).

De novo review is appropriate when reviewing an administrative hearing when the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 589 (Chk. S. Ct. Tr. 2003).

A motion to amend a complaint to add the FSM as a party will be granted when the original complaint was an appeal of a Pohnpei state administrative decision and when a related FSM administrative decision involving the plaintiff's related tax matters was recently issued since, as the plaintiff asserts that Pohnpei and the FSM are inconsistently interpreting tax laws, it seeks to add the FSM as a defendant so that both Pohnpei and the FSM will be required to tax it uniformly, without potentially subjecting it to double tax liability. Judicial economy weighs in favor of permitting plaintiff to file its amended complaint and consolidate the appeals of inconsistent Pohnpei and FSM administrative decisions. Truk Trading Co. (Pohnpei) v. Department of Treasury, 12 FSM Intrm. 1, 2-3 (Pon. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM Intrm. 13, 15-16 (Kos. S. Ct. Tr. 2003).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

When the determined parcels' boundaries are clear by either permanent markers or by readily recognizable natural features, the Land Commission is not required to give written notice to the claimants before planting monuments. The planting of monuments is an administrative task and is completed pursuant to the Land Commission's instructions. The Division of Survey's planting of monuments, by itself, does not establish boundaries for purposes of an appeal. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

In reviewing the Land Commission's decision and procedure, the Kosrae State Court must determine whether the Land Commission violated the Kosrae Constitution or state law. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, on appeal, will not substitute its judgment for the Land Commission's well-founded evidentiary findings. An appellate court will not reweigh the evidence presented at the hearing. When the court, in reviewing the Land Commission's record and decision in a matter, concludes that the Commission has reasonably assessed the evidence presented regarding the parcel's size, the Land Commission's factual finding of the parcel's size is adequately supported by substantial evidence in the record, and its findings of fact are not clearly erroneous and will not be disturbed on appeal. Tulenkun v. Abraham, 12 FSM Intrm. 13, 17 (Kos. S. Ct. Tr. 2003).

Any person aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 78, 79-80 (Kos. 2003).

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

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's

jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 78, 81 (Kos. 2003).

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60 day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer. The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 78, 81 (Kos. 2003).

A denial of a motion to dismiss for lack of jurisdiction is without prejudice to Social Security's right to raise the statute of limitations defense by motion pursuant to FSM Civil Rule 12(c). Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 78, 81 (Kos. 2003).

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek the decision's reversal at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 89 (Pon. 2003).

A plaintiff's complaint will not be dismissed because a plaintiff failed to exhaust its administrative remedies by not presenting the substance of its complaint to an agency before filing it with the court when the defendant cannot point to any administrative procedure that the plaintiff should have followed before filing the action, but did not. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 89-90 (Pon. 2003).

When a plaintiff's claims for unjust enrichment, tortuous interference with contract and fraud arise out of the same operative facts, but are against a defendant personally and are distinctly separate from those which have been brought against the administrative agency, they are tort claims against which the individual, not the agency, needs to defend, and regarding which the agency is not authorized to make judicial determinations. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 90 (Pon. 2003).

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 Intrm. 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 Intrm. 84, 91 (Pon. 2003).

The court will not add additional time for a petitioner to seek judicial review when the social security statute gives 60 days and this is a considerable amount of time, and when even given the exigencies of mail service in Micronesia, equitable considerations do not require that additional time be given. Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 101, 104 (Kos. 2003).

A defense that a plaintiff failed to exhaust its administrative remedies, but which does not specify precisely what administrative procedures would be involved and which was not pled, is thus waived. AHPW,

Inc. v. FSM, 12 FSM Intrm. 114, 123 (Pon. 2003).

In an appeal from a Land Commission determination of ownership, the reviewing court will apply the clearly erroneous standard of review. If the agency decision is a considered judgment, arrived at on the basis of a full record and careful reflection, the court is more likely to rely on the agency's knowledge and judgment and to restrict the scope of review. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 160 (Chk. S. Ct. Tr. 2003).

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM Intrm. 184, 185 (Pon. 2003).

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM Intrm. 184, 186 (Pon. 2003).

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

While under normal circumstances exhaustion of administrative remedies is a pre-requisite to bringing an action in court challenging the constitutionality of personnel actions, an exception to this general rule exists. When exhaustion of administrative remedies is rendered futile, due to the bad faith, improper actions or predetermination of the administrative body itself, exhaustion of the administrative process is not required, and redress may be immediately sought in the courts. Tomy v. Walter, 12 FSM Intrm. 266, 270 (Chk. S. Ct. Tr. 2003).

When it is clear that any attempt by plaintiff to obtain relief through the Public Service Act would have been futile, the court has jurisdiction to hear the plaintiff's claims. Tomy v. Walter, 12 FSM Intrm. 266, 270 (Chk. S. Ct. Tr. 2003).

The 120-day statutory time limit to appeal from the Kosrae Land Commission to the Kosrae State Court is jurisdictional because deadlines set by statute, especially deadlines to appeal including those from administrative agency decisions, are generally jurisdictional. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 278 (App. 2003).

An appeal from an administrative agency must be perfected as well as started within the established statutory time period and part of perfecting an appeal is the joinder of indispensable parties. Failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 279 (App. 2003).

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and

thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM Intrm. 280, 284-85 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM Intrm. 280, 286 (App. 2003).

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 Intrm. 280, 286-87 (App. 2003).

That the Land Commission did not properly consider certain evidence, is an issue the Kosrae State Court may properly consider under its standard of review without the need for a trial *de novo*, and, if the appellant should prevail, it can order a remand. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

The statute contemplates that judicial review of a Land Commission appeal would be the norm and that a trial *de novo* would be held only in the uncommon event that the Kosrae State Court had found good cause for one. When that court did not, and when there has been no showing that would warrant a conclusion of good cause, the Kosrae State Court has not abused its discretion by not holding a trial *de novo*. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

The Kosrae State Court, in reviewing Land Commission appeals, properly uses the following standard of review – it considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, that court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

A trial de novo gives each side the opportunity to present evidence as if no previous adjudication had been made. The trial judge is placed in the fact finding position – rather than just reviewing the record, he receives evidence and testimony and reaches his own conclusions based upon all of the evidence. Thus, it does not matter to the trial court, or to the appellate court, what conclusion the Land Commission reached regarding the parcel at issue. George v. Nena, 12 FSM Intrm. 310, 316 (App. 2004).

When a case pending in the trial division is an appeal from the Chuuk Land Commission, the procedure followed will, where appropriate, be analogous to the procedure usually used for appeals – the FSM Rules of Appellate Procedure. Church of the Latter Day Saints v. Esiron, 12 FSM Intrm. 473, 474-75 (Chk. 2004).

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

When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact to be forwarded to the President for his final review. If, after the President completes his final review, any party believes such action is necessary and appropriate, the party may file a motion to reinstitute the judicial proceedings. Maradol v. Department of Foreign Affairs, 13 FSM Intrm. 51, 54-55 (Pon. 2004).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board

final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM Intrm. 150, 152 (Kos. 2005).

Although, it would have been desirable for the claimant to have undergone vision testing as contemplated by the Board, the question under 53 F.S.M.C. 708 is whether there are now facts of record, supported by competent, material, and substantial evidence, sufficient for the findings of the Board to be deemed conclusive and when on a review of the record, the court finds that there is sufficient evidence in the record to deny the disability claim, it will affirm the Board's final decision in its entirety. Clarence v. FSM Social Sec. Admin., 13 FSM Intrm. 150, 153 (Kos. 2005).

– Statutory Construction

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision-maker reviews the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. 52 F.S.M.C. 156. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

The National Public Service System Act fixes two conditions for a national government employee's termination. Responsible officials must be persuaded that: 1) there is "cause," that is, the employee has acted wrongfully, justifying disciplinary action; and 2) the proposed action will serve "the good of the public service." 52 F.S.M.C. 151-157. Suldan v. FSM (II), 1 FSM Intrm. 339, 353 (Pon. 1983).

The National Public Service System Act's provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. Suldan v. FSM (II), 1 FSM Intrm. 339, 353-54 (Pon. 1983).

The highest management official must base his final decision on a national government employee's termination under section 156 of the National Public Service System Act, upon the information presented at the ad hoc committee hearing and no other information. Suldan v. FSM (II), 1 FSM Intrm. 339, 359-60 (Pon. 1983).

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM Intrm. 339, 362 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. Suldan v. FSM (II), 1 FSM Intrm. 339, 362 (Pon. 1983).

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 Intrm. 123, 129 (App. 1987).

Even if some deference is accorded to the legal judgment of an agency, the courts must remain the final authority on issues of statutory construction. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 132 (App.

1987).

Any court deference to another decision-maker on a legal question is a departure from the norm and may occur only when there is sound reason. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 132, 134 (App. 1987).

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 statute's meaning. Michelsen v. FSM, 3 FSM Intrm. 416, 421 (Pon. 1988).

In reviewing the statutory interpretation of an agency authorized to implement the particular statute, the court should not defer but is under an affirmative duty to make its own determination as to the meaning of the statute when there is no indication that Congress intended the court to defer, when no particular scientific or other expertise is required for administration of the act, and when the interpretation does not involve mere routine operating decisions, but instead represents a fundamental policy decision having constitutional implications. Carlos v. FSM, 4 FSM Intrm. 17, 25 (App. 1989).

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae State Code § 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

When there is an apparent, or even putative, conflict between a statute of general application like the Administrative Procedures Act, and a statute directed toward a particular agency, the more specific provisions will apply. Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 101, 104 (Kos. 2003).

ADMIRALTY

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. FSM Const. art. XI, § 6(a). Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 68-71 (Kos. 1982).

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 71 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 72 (Kos. 1982).

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish United States federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 57, 59 (Truk 1989).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 374 (App. 1990).

Supplies and service that are necessaries when provided to a vessel give rise to maritime liens. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessaries, not on the contractual relation. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessaries must rely on the credit of the vessel. General maritime law presumes that a provider of necessaries relies on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to the amount and never funded cannot overcome the presumption that a supplier of necessaries relied on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 4 (Pon. 1993).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM Intrm. 1, 4 (Pon. 1993).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 599 (Pon. 1994).

The grant of admiralty and maritime jurisdiction to the national courts was intended to assist in the development of a uniform body of maritime law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 600 (Pon. 1994).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel's owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM Intrm. 81, 82 (Chk. 1995).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would

be. FSM v. M.T. HL Achiever (I), 7 FSM Intrm. 221, 222-23 (Chk. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 257 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459 (App. 1996).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 460 n.2 (App. 1996).

The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 463 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 464-65 (App. 1996).

Proceedings concerning the arrest or release of a vessel should take place in the civil action in which it is a defendant, not in a related criminal case. Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 471, 474 n.4, 475 n.5 (App. 1996).

Generally, to complete a court's jurisdiction in an in rem action, the res must be seized and be under the court's control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is

to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM Intrm. 31, 33 (Chk. S. Ct. Tr. 2002).

Cases involving claims for wages by seamen are maritime cases. Robert v. Sonis, 11 FSM Intrm. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM Intrm. 31, 33 (Chk. S. Ct. Tr. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM Intrm. 116, 117 (Chk. 2002).

In maritime law an allision is the sudden impact of a vessel with a stationary object such as an anchored vessel or a pier or a submerged reef. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM Intrm. 192, 196 n.1 (Yap 2003).

– Ships

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

– Ships – Mortgages

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 57, 59-60 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 57, 60 (Truk 1989).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 376 (App. 1990).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor's and mortgagee's names, the mortgage's amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner's debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional $100,000 over its registered amount would destroy the statutory scheme created by Congress and one of the goals of the ship registry system – that all ownership interests be recorded on the ship's Certificate of Registry, and would also hinder another purpose and goal – enhancing the ability of ship owners to obtain needed financing. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the

Supreme Court. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 365 (Chk. 2003).

AGENCY

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. Rauzi v. FSM, 2 FSM Intrm. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 25 (App. 1985).

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

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 212 (Pon. 1995).

A person can be criminally liable for the conduct of another if having a legal duty to prevent the commission of an offense, he fails to make proper effort to do so. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 212 (Pon. 1995).

The acts of agents, illegal or otherwise, are the acts of the principal itself provided that those acts are in the ordinary course of the agent's business relationship with its principal because under accepted principles of agency law a principal is responsible for the criminal acts of its agents provided that those acts where committed in furtherance of the agents' business relationship with the principal. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 212-13 (Pon. 1995).

The principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Black Micro Corp. v. Santos, 7 FSM Intrm. 311, 315-16 (Pon. 1995).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on behalf of the principal. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Kosrae Island Credit Union v. Obet, 7 FSM Intrm. 416, 419 n.2 (App. 1996).

A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Bank of the FSM v. O'Sonis, 8

FSM Intrm. 67, 69 (Chk. 1997).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

The existence of an agency relationship is not negated merely because the agent is named by someone other than the principal. Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

A party may require another to appoint an agent as a condition to an agreement. Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

When a fishing boat captain knows that he has caught fish and retained possession of fish while he had not maintained the required daily catch log in English that knowledge is attributable, under agency law principles, to the foreign fishing agreement party through which the boat was authorized. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79, 91 (Pon. 1997).

A principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Agency relationships are based upon consent by one person that another shall act in his behalf and be subject to his control. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79, 91-92 (Pon. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 93, 94-95 (Chk. 1997).

A principal is bound by, and liable for, the acts of its agent, if those acts are done with actual or apparent authority from the principal and are within the scope of the agent's employment. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 176 (Pon. 1997).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 180 (Pon. 1997).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 442 (Chk. 1998).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Sigrah v.

Timothy, 9 FSM Intrm. 48, 52 (Kos. S. Ct. Tr. 1999).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM Intrm. 48, 52 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM Intrm. 112, 115 (Kos. 2001).

Generally, a principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001).

Agency relationships are based upon one person's consent that another shall act on his behalf and be subject to his control. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001).

Acting for another is the act of an agent. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001).

Someone acting on another's behalf is someone who is acting as an agent for that other. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001).

There is no authority by which an agent may be held liable to a third party for its principal's actions when they are not also the agent's own actions or when the agent has not expressly agreed to be liable for those actions. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM Intrm. 288, 292 (Kos. 2001).

When the defendants provide documents signed by both Naiten and Linda Phillip showing them to be co-owners of the business; Kolonia Town municipal records showing that they were recorded as the business's co-owners for business license purposes; an affidavit concerning times that both had come in together to make the original insurance application and that later dealings with the business were always with Linda Phillip; and the rental agreement for the damaged pickup, which was signed by Linda Phillip as "company agent" and when the plaintiff offers no evidence, argument, or affidavit that Linda Phillip did not have authority to act as the business's agent in this regard, the court must conclude that there is no genuine issue of fact that Linda Phillip had the actual or apparent authority to act as agent concerning payment of the insurance premium. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of

his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

AGRICULTURE

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

AMICUS CURIAE

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

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

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM Intrm. 502, 505-06 (App. 2003).

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

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

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

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

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

Amicus curiae literally means friend of the court. An amicus is someone who is not a party to the lawsuit but who petitions the court or who is asked by the court to file a brief in the matter because that person has a strong interest in the subject matter. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

An amicus curiae gives the court information on some matter of law in respect to which the court is doubtful or calls the court's attention to a legal matter which has escaped or might escape the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae is a neutral provider of information or legal insight or has a partisan interest. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

When a criminal contempt prosecution of an attorney regarding his relationship with his client is a matter of first impression in the Federated States of Micronesia and the court concludes that an amicus curiae's insight may benefit it in understanding the legal issues, a petition to appear as an amicus curiae will be granted. This appearance is limited to briefing legal issues. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

APPELLATE REVIEW

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

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

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

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

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

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

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

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

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

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

That fee arrangements had not been made is not good cause in support of a motion to enlarge time for filing appellee's brief when the motion is filed well after the brief was due and after oral argument was held. Paul v. Celestine, 3 FSM Intrm. 572, 574 (App. 1988).

The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM Intrm. 344, 345 (App. 1990).

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

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

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

Conducting trials de novo and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of Resources & Dev., 6 FSM Intrm. 137, 138 (App. 1993).

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

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

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

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

The appellate division does not have the power to enlarge time to petition for permission for an

interlocutory appeal, but the trial division may re-enter its order with a prescribed statement thereby causing a new ten-day period to run because a trial court retains jurisdiction over its interlocutory orders and may reconsider any such order until a final judgment is entered. In re Estate of Hartman, 7 FSM Intrm. 409, 410 (Chk. 1996).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A motion to strike a single appellate justice's dismissal of an appeal may be set for oral argument and determination by an appellate panel. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300f (Chk. S. Ct. App. 1998).

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

An appellant who desired to proceed on an appeal in forma pauperis but failed to file an affidavit showing his inability to pay and who failed to bring his in forma pauperis motion to the attention of the trial division, is deemed to have abandoned his request or at least waived any right he may have had to proceed in forma pauperis. Reselap v. Chuuk, 8 FSM Intrm. 584, 585-86 (Chk. S. Ct. App. 1998).

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

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

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

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

Appellate Rule 4(a)(2), which allows a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order to be treated as filed after such entry and on the day thereof, is designed for cases of premature appeals where it is known that the final order or judgment to be entered will merely reflect the earlier decision. It specifically does not apply when Rule 4(a)(4) does. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

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

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 119 (App. 1999).

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

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM Intrm. 160, 162 (App. 1999).

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

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

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

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

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

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

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

Only one Chuuk State Supreme Court justice may hear or decide an appeal in the appellate division. The other members of the appellate panel must be temporary justices appointed for the limited purpose of

hearing the appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 150 (Chk. S. Ct. App. 2001).

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 Intrm. 540, 546 (Chk. S. Ct. App. 2002).

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

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

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

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

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

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM Intrm. 210, 216-17 (Chk. S. Ct. App. 2002).

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

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

No appellee is forced to do anything in any appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 627 (App. 2003).

An appellant must timely file a request for a transcript, or a statement of the issues, a designation of the appendix, and an opening brief, with an appendix. An appellant's failure to comply with these rules may subject its appeal to dismissal. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 627 (App. 2003).

An appellee may supplement the designation of the appendix, but if it does not, the appendix stands as designated by the appellant; and an appellee is also directed to file its brief within thirty days of service of the appellant's brief, but the sole consequence of not doing so is that the appellee will not be heard at oral argument except by permission of the court. The court, however, prefers full participation by appellees as the

court, FSM jurisprudence, and the FSM bar usually benefit from a full presentation of all the relevant issues by all the interested parties. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 627 & n.3 (App. 2003).

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

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

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

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

The Kosrae State Court trial division has jurisdiction to review all decisions of inferior courts, including decisions entered by the Kosrae Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 421 (Kos. S. Ct. Tr. 2004).

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

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 440 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 440 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 440 (App. 2004).

When the court refused to allow the original petition for a writ of mandamus to be amended and provided that the amended petition would be considered a separate petition involving the same parties, the petitioners' pursuit of the petition after the order denying amendment did not made the original petition frivolous. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 440 (App. 2004).

Merely being a case of first impression does not automatically make a petition not frivolous. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 440-41 (App. 2004).

Rule 38 sanctions will not be awarded when the petition was not wholly without merit or was frivolous since the constitutional issues relating to a privacy right had not been previously ruled upon. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 441 (App. 2004).

In all cases in which an appellee seeks Rule 38 damages, an appellee shall file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion,

may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 441 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 437, 441 (App. 2004).

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

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 452 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 452 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 452 (App. 2004).

When a petition was not wholly without merit or groundless, or when the petition was not frivolous since the issues raised had not previously been ruled upon when they were raised in the petition and when there was also some question raised as to how appellate review of the issues could be sought, whether by writ of mandamus or by an interlocutory appeal, the petition is not frivolous and Rule 38 damages will not be awarded. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 453 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 453 (App. 2004).

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

Determining whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 462-63 (App. 2004).

An appeal is frivolous when the result is obvious, or when the appellant's arguments are wholly without merit or groundless, or when the court has previously ruled on the question on appeal. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 463 (App. 2004).

When an action was filed based upon the application or good faith argument for the extension of the Berman rule and upon the contention that the collateral order doctrine allowed an interlocutory appeal; when no previous decisions had specifically dealt with the application or limits of the collateral order doctrine and related issues; and when there was also some question raised as to how a party should seek appellate review of the issues (by writ of mandamus or by an interlocutory appeal), the appeal was not wholly without merit or

groundless, or frivolous and no Rule 38 attorney's fees will be granted. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 463 (App. 2004).

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

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

— Briefs and Record

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

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

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

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

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

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

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

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

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

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

Parties to an appeal must reference properly and clearly in their briefs the parts of the record containing

material in support of their arguments, and unless the court has waived an appendix under Appellate Rule 30(f), references should be to the appropriate pages of the appendix. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 228 (App. 1993).

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

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

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

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

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

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

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

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

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

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

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

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

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM Intrm. 323, 326 (App. 2001).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

— Decisions Reviewable

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

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

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

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

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

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

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

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

Generally only final judgments or orders can be appealed, but the appellate division may, at its discretion, permit an appeal of an interlocutory order. The court, in exercising its discretion should weigh the

advantages and disadvantages of an immediate appeal and consider the appellant's likelihood of success before granting permission. Jano v. King, 5 FSM Intrm. 326, 329 (App. 1992).

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

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

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

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

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

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

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

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

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

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

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

When an appeal from an administrative agency decision involves an issue of extreme time sensitivity and of national importance that ultimately would have to be decided by the appellate division the court may

allow a direct appeal to the appellate division. Robert v. Mori, 6 FSM Intrm. 394, 397 (App. 1994).

The general rule is that appellate review of a trial court is limited to final orders and judgments. However, certain interlocutory orders involving injunctions, receivers and receiverships, and interlocutory decrees determining rights and liabilities in admiralty cases, are reviewable in the appellate division. In exceptional cases, the extraordinary writs of mandamus or of prohibition may be issued to correct a trial court's decisions before final judgment. Appellate review may also be granted when the trial court has issued an order pursuant to Appellate Rule 5(a). Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 119 (App. 1999).

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

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

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

Once an appellant has sought and obtained review of a single justice's order by the appellate panel of the Chuuk State Supreme Court appellate division, the FSM Supreme Court appellate division may then

review that decision. At that point the FSM Supreme Court has jurisdiction to hear the appeal, but not before. Wainit v. Weno, 9 FSM Intrm. 160, 163 (App. 1999).

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

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

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

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

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

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

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

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

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

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

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

When other trial division cases recognize the principle of sovereign immunity and the trial court decision

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

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

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

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

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

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

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

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

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

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

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

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

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review

before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 409 n.3 (App. 2003).

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

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

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

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

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

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

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

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

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

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

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

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

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

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk

State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 356 (Chk. S. Ct. Tr. 2004).

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

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

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

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

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

When there are no monetary Rule 11 sanctions against party's counsel and he is not appealing in his own name as the real party in interest and the Rule 11 sanctions run to the party and are identical to the Rule 37 sanctions (which can only be appealed after entry of a final judgment) imposed on the party, the Rule 11 sanctions are not properly before the court in an interlocutory appeal. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 461 (App. 2004).

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

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

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

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

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

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

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

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

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

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

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

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

– Dismissal

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

A delay of only two days in filing the appellate brief does not warrant dismissal of the appeal when there

is no showing of prejudice. Kephas v. Kosrae, 3 FSM Intrm. 248, 253 (App. 1987).

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

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

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

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM Intrm. 193, 194 (App. 1995).

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

When appellants to the Chuuk State Supreme Court appellate division have made little or no effort to comply with any of the requirements of Appellate Rule 10, their appeals are due to be dismissed. Iwenong v. Chuuk, 8 FSM Intrm. 550, 551 (Chk. S. Ct. App. 1998).

When, in a three-year old criminal appeal, notice was served requiring appellant's opening brief to be filed and served by a certain date and the notice further stated that failure to do so would be grounds for dismissal of the appeal, no brief was ever filed and a motion bordering on frivolous was filed for more time, the motion may be denied and the case is remanded to the trial division for additional proceedings, including sentencing, as is provided for by law. Reselap v. Chuuk, 8 FSM Intrm. 584, 586-87 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date for oral argument and for filing appellant's opening brief, that stated that failure to do so would be grounds for dismissal. Os v. Enlet, 8 FSM Intrm. 587, 588 (Chk. S. Ct. App. 1998).

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

An appellee's oral motion at oral argument to dismiss for appellant's failure to prosecute the appeal in accordance with the appellate rules may be denied because he has waived any objections by his delay in raising procedural matters until the time set for oral argument and by not complying with the appellate rule concerning motions. In re Malon, 8 FSM Intrm. 591, 592 (Chk. S. Ct. App. 1998).

An appeal may be dismissed when the appellants have been served with a notice of oral argument and briefing schedule which required appellant's brief to be filed no later than a certain date and appellants have filed no brief and no extension of time to do so was ever requested of or granted by the court and when the

appellee has filed a written motion for dismissal on those grounds and when, at oral argument. appellants' counsel offered no reasonable justification for not filing a brief. Walter v. Welle, 8 FSM Intrm. 595, 596 (Chk. S. Ct. App. 1998).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 (App. 2000).

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

A practicing attorney is expected to know the rules and abide by them. Nevertheless, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 361-62 (App. 2000).

The Chuuk State Supreme Court's authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

An appellant may dismiss his own appeal upon such terms as may be agreed by the parties or fixed by the court. An appellee may not take over and prosecute an opposing party's appeal because he would be contesting an issue that he had never before challenged. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 158 (Chk. S. Ct. App. 2001).

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

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

An appeal may be dismissed when the appellant has failed for approximately 6 months after entry of the record ready notice, to serve on the appellee a designation of the parts of the record which appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review, both of which the appellant must file within 10 days after the date of the clerk's record ready notice. Cuipan v. FSM, 10 FSM Intrm. 323, 326 (App. 2001).

Good cause exists to grant an appellee's motion to dismiss when the appellant's failure to comply with the Rules has postponed the final resolution of the case, forestalled the possibility that the defendant would be confined to serve her sentence, and undermined the policy of finality. Cuipan v. FSM, 10 FSM Intrm. 323, 327 (App. 2001).

When an action was filed as an appeal under Kosrae State Code § 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it

appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM Intrm. 335, 336 (Kos. S. Ct. Tr. 2001).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM Intrm. 601, 606 (Chk. S. Ct. App. 2002).

Rule 3(a) does not require the dismissal for failure to comply with the procedural rules, but merely permits it in the proper case. Not every appeal which fails to comply with the time requirements in Rules 10, 11, and 12 must be dismissed because the rules are stated in permissive, rather than mandatory language. Wainit v. Weno, 10 FSM Intrm. 601, 608 (Chk. S. Ct. App. 2002).

Because an appellate court is not required to dismiss every appeal which does not meet each of the time limitations in the rules, some lesser appropriate action or sanction should be tried first instead of opting for the most extreme sanction of dismissal. Wainit v. Weno, 10 FSM Intrm. 601, 608 (Chk. S. Ct. App. 2002).

Generally, dismissal of an appeal for failure to comply with procedural rules is not favored, although Rule 3(a) does authorize it in the exercise of sound discretion. That discretion should be sparingly used unless the party who suffers it has had an opportunity to cure the default and failed to do so. Wainit v. Weno, 10 FSM Intrm. 601, 608 (Chk. S. Ct. App. 2002).

Before dismissing an appeal, a court should consider and weigh such factors as whether the defaulting party's action is willful or merely inadvertent, whether a lesser sanction can bring about compliance, and the degree of prejudice the opposing party has suffered because of the default. Wainit v. Weno, 10 FSM Intrm. 601, 608 (Chk. S. Ct. App. 2002).

When there is no allegation that the law firm's omissions in the appeal were anything but inadvertent and no evidence that they were made in bad faith, when the defect was cured promptly once the law firm had notice of it, when every indication is that a lesser sanction than dismissal would have assured compliance with Rule 10(b), and when the appellee could not have been misled or prejudiced because the statement of issues had not been timely filed and did not suffer any prejudice because of the default, none of the factors that should have been considered weigh in favor of dismissal. All weigh in favor of a lesser sanction or none at all. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

That appellant's counsel and the members of his law firm are experienced attorneys and have practiced law long enough in the court is insufficient to dismiss an appeal when the appellant has promptly cured any defects in the appeal, when the default was not willful, when there was no prejudice to the appellee, and when the appellant's only failure was his untimely filing of the statement of issues and the certificate that a transcript would not be needed. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

While practicing counsel are expected to know the rules and abide by them, a preference exists for resolution of matters on the merits. Within the bounds of reason, and except where a specific rule, law, or conduct of a party or his counsel directs a different result, this preference should be given effect and dismissal denied. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

When neither Rule 3(a) nor counsel's conduct in the appeal directs a dismissal, the preference for resolution of matters on the merits should be given effect and dismissal denied. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

If an appeal is one where the issues on appeal involve factual findings and no meaningful review is possible without a transcript, the appellate court is left with no choice but dismissal when the appellant has not provided one. But even then dismissal would likely come only after an appellee's motion or when the time had come for a court's decision on the merits. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

Where a single justice abused his discretion when he denied motions to vacate the dismissal and to enlarge time to file Rule 10(b) statements, the appeal will be reinstated and the Rule 10(b) statements considered properly filed. Wainit v. Weno, 10 FSM Intrm. 601, 609 (Chk. S. Ct. App. 2002).

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

An appellee's trial court motion to dismiss an appeal on the ground that it is moot must be denied for want of jurisdiction of the trial court to rule upon it. It is a matter for the appellate division to consider, if raised there. FSM Dev. Bank v. Louis Family, Inc., 10 FSM Intrm. 636, 638 (Chk. 2002).

Because the requirement that an appeal be timely filed is mandatory and jurisdictional, an untimely filed appeal must be dismissed. Bualuay v. Rano, 11 FSM Intrm. 139, 145 (App. 2002).

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

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

Violation of filing a timely notice of appeal requires dismissal of the appeal due to lack of jurisdiction. However, other violations of appellate requirements may be subject to dismissal or other sanctions. Authority to dismiss a case on appeal on procedural grounds is discretionary. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 419 (Kos. S. Ct. Tr. 2004).

If it appears that the court lacks subject matter jurisdiction the case will be dismissed. Failure to file the notice of appeal within the statutory time will result in dismissal of the appeal. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422 (Kos. S. Ct. Tr. 2004).

Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregard of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy

of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422-23 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27-28 (Kos. S. Ct. Tr. 2004).

An appellate panel cannot dismiss an appeal not assigned to it even though the parties to that appeal have consented to its dismissal. Nikichiw v. O'Sonis, 13 FSM Intrm. 132, 136 (Chk. S. Ct. App. 2005).

A single justice does not have the power to dismiss a cross-appeal when the cross-appellant's brief allegedly fails to make proper citations to the record as required by the appellate rules; includes extraneous matters; and has an inadequate appendix and which is alleged to be without merit on its face. A single justice may not dismiss or otherwise determine an appeal, except upon stipulation of all parties, or upon failure of a party to comply with the timing requirements of the appellate rules, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

A single justice may dismiss an appeal for failure to comply with the appellate rules' timing requirements, including the timing requirement to file a notice of appeal. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

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

Among the factors which the court considers on a motion to dismiss under Rule 31(c) is the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation. Chuuk v. Davis, 13 FSM Intrm. 178, 183 (App. 2005).

When the appellee has suffered no prejudice due to the appellant's neglect to file an appendix and cite to the record since the appeal relates primarily to legal issues that may be addressed using only the appendix filed by the appellee, the appeal will not be dismissed for the appellant's negligence. Chuuk v. Davis, 13 FSM Intrm. 178, 183 (App. 2005).

– In Forma Pauperis

Generally, only natural persons may proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 517 (Pon. 2002).

In order to proceed in forma pauperis on appeal, an appellant must file a motion in the court appealed from together with an affidavit showing his inability to pay fees and costs or give security, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 517 (Pon. 2002).

Appellate Form 2's absence from the FSM Appellate Rules will not be a ground for denying an in forma pauperis motion when the affidavit shows the appellant's inability to pay fees and costs or to give security therefor in the detail required by Rule 24(a) and shows that he is indigent and without any income or property. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 517-18 (Pon. 2002).

For an indigent litigant to proceed on appeal in forma pauperis, the appeal must be made in good faith and not be frivolous. The two requirements are related. "Good faith" is demonstrated when a party seeks appellate review of any issue "not frivolous." For an issue not to be frivolous, it does not have to be meritorious. The issue only has to be colorable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 518 (Pon. 2002).

To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous. Probable success on the merits need not be shown. The court only examines whether the appeal involves legal points arguable on their merits (and therefore not frivolous). The existence of any nonfrivolous or colorable issue on appeal requires the court to grant the motion to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 518 (Pon. 2002).

Raising nonfrivolous issues on appeal entitles an indigent to proceed in forma pauperis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 518 (Pon. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 518 (Pon. 2002).

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

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

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

– Notice of Appeal

Upon showing of excusable neglect or good cause, Rule 4(a)(5) permits extension of time for filing notice of appeal, upon motion made within 30 days after expiration of the 42 days prescribed in Rule 4(a)(1). Jonas v. Mobil Oil Micronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

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

A court has no authority to grant enlargement of time to file notice of appeal pursuant to motion filed after the maximum period of 72 days. Jonas v. Mobil Oil Micronesia, Inc., 2 FSM Intrm. 164, 166 (App. 1986).

Under the FSM Appellate Rule 4(a)(1), a notice of appeal must be filed within 42 days after entry of the judgment. Kimoul v. FSM, 4 FSM Intrm. 344, 346 (App. 1990).

The proper procedure, in accordance with Kosrae State law and the FSM appellate rules, in filing a notice of appeal from a decision of the Kosrae State Court is to file notice in both Kosrae State Court and the FSM Supreme Court, either with the trial division in Kosrae or directly with the appellate division. Tafunsak v. Kosrae, 6 FSM Intrm. 467, 468 (App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 498 (Chk. S. Ct. App. 1994).

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

A party appealing a decision of the Kosrae State Court must file a notice of appeal with the state court and with the FSM Supreme Court, either with its trial division on Kosrae or with its appellate division. Where appellant's failure to timely and properly file his notice of appeal in the FSM Supreme Court trial division on Kosrae was because of faulty instructions of a court employee, dismissal of the appeal is unwarranted. Kosrae Island Credit Union v. Obet, 7 FSM Intrm. 193, 194 (App. 1995).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. The trial court is then divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it. Walter v. Meippen, 7 FSM Intrm. 515, 517 (Chk. 1996).

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

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

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

Appellate Rule 4(a)(2), which allows a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order to be treated as filed after such entry and on the day thereof, is designed for cases of premature appeals where it is known that the final order or judgment to be entered will merely reflect the earlier decision. It specifically does not apply when Rule 4(a)(4) does. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 119 (App. 1999).

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

A notice of appeal filed in the FSM Supreme Court while a motion to reconsider is pending before the Pohnpei Supreme Court appellate division has no effect because it was prematurely filed. Jurisdiction was thus never transferred to the FSM Supreme Court appellate division. Damarlane v. Pohnpei, 9 FSM Intrm.

114, 119 (App. 1999).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, except for the trial court to take action in aid of the appeal, such as an application for release from jail pending appeal, a motion for stay, taxing costs, considering and denying (but not granting unless remanded) a Rule 60(b) relief from judgment motion. Bank of Guam v. O'Sonis, 9 FSM Intrm. 197, 198-99 (Chk. 1999).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record no matter how inadequate the notice because it raises a question addressed to the appellate court's jurisdiction. Bank of Guam v. O'Sonis, 9 FSM Intrm. 197, 199 (Chk. 1999).

Rule 3(b) is permissive as to filing a joint notice of appeal. No provision in the rule makes this decision irrevocable. Chuuk v. Secretary of Finance, 9 FSM Intrm. 255, 257 (App. 1999).

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

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A single justice may dismiss an appeal upon a party's failure to comply with the appellate rules' time requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 (App. 2000).

The Federated States of Micronesia Supreme Court appellate division may not enlarge the time for filing of a notice of appeal. Any power to enlarge the time for filing the notice of appeal lies with the trial division, not the appellate division. FSM Appellate Procedure Rule 4(a)(5) provides that the court appealed from, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time to file. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 & n.2 (App. 2000).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 (App. 2000).

Generally, a timely and properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Department of the Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 465, 466-67 (App. 2000).

The notice of appeal divests trial court of jurisdiction, except to take action in aid of the appeal. Examples of orders in aid of an appeal include, but are not limited to, applications for release from jail pending appeal, applications for stays pending appeal, taxation of costs on a judgment after notice of appeal filed, and considering and denying a Rule 60(b) relief from judgment motions (but not granting a Rule 60(b) motion unless case remanded). Department of the Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 465, 467 (App. 2000).

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

467 (App. 2000).

Upon a showing of excusable neglect or good cause, the court appealed from may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by Rule 4(a). Hartman v. Bank of Guam, 10 FSM Intrm. 89, 94 (App. 2001).

In the absence of a notice of appeal filed within 42 days after entry of judgment, a putative appellant has a maximum of 72 days after entry of judgment in which to file, for good cause, a motion to extend the time for the filing of the notice of appeal. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 94 (App. 2001).

Generally, a notice of appeal acts to transfer jurisdiction from the trial court to the reviewing court, with some exceptions all characterized as acts in aid of the appeal, such as motions for release from jail pending appeal, for a stay pending appeal, to proceed *in forma pauperis* on appeal, to tax costs, and the trial court may both consider and deny Rule 60(b) relief from judgment motions, but cannot grant one unless the case is remanded. FSM Dev. Bank v. Louis Family, Inc., 10 FSM Intrm. 636, 638 (Chk. 2002).

A trial court is without jurisdiction or authority to strike a notice of appeal from the record, no matter how inadequate the notice is, because it raises a question addressed to the appellate court's jurisdiction and the notice of appeal's filing transfers jurisdiction to the appellate court. FSM Dev. Bank v. Louis Family, Inc., 10 FSM Intrm. 636, 638 (Chk. 2002).

A notice of appeal divests the trial court of jurisdiction except to act in aid of the appeal. FSM Dev. Bank v. Louis Family, Inc., 10 FSM Intrm. 636, 638 (Chk. 2002).

The 42-day appeal period applies to all appellate review of final decisions of the Chuuk State Supreme Court appellate division. A certiorari petition is treated as a notice of appeal since it seeks appellate review of a Chuuk State Supreme Court appellate division final decision. Bualuay v. Rano, 11 FSM Intrm. 139, 145 (App. 2002).

Upon a motion filed not later than 30 days after the expiration of the time prescribed by Appellate Rule 4(a) and with notice to the other parties, Rule 4(a)(5) allows the court appealed from to extend the time for filing a notice of appeal for excusable neglect or good cause. Bualuay v. Rano, 11 FSM Intrm. 139, 145 (App. 2002).

Although Rule 4(a)(5) has no absolute deadline within which the court appealed from must rule on a motion to extend time to file a notice of appeal, it does expect a fairly prompt ruling and encourages one within the thirty-day period. Therefore when there has been no ruling on a motion to extend for almost three years, it is best to treat the lack of a ruling as a denial. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002).

The FSM Supreme Court appellate division has no authority to waive or extend Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002).

The court appealed from may extend the time to seek appellate review of a final decision upon a showing of excusable neglect or good cause. Failure to learn of the entry of judgment is a major, but not the only, reason for finding excusable neglect. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002).

Merely being a busy lawyer does not constitute excusable neglect justifying an enlargement of time to file a notice of appeal, but when other factors are also present, the neglect may be excusable. Bualuay v. Rano, 11 FSM Intrm. 139, 147 (App. 2002).

The alternative ground for a motion to extend time to appeal, "good cause" is a broader and more liberal

standard than "excusable neglect," and under a plain reading of the rule, the good cause standard applies both to motions to extend filed after the initial appeal period has passed as well as those filed before. Bualuay v. Rano, 11 FSM Intrm. 139, 147 (App. 2002).

Under the unique combination of the state court's lack of a working copy machine, which delayed the entry of that court's opinion becoming known to the parties; the appellant's protracted unavailability for consultation with his counsel coupled with the short time left to appeal once he became available; the contemporaneous press of urgent cases; the appellant's counsel's diligent and good faith efforts; and the lack of prejudice to the opposing parties; both excusable neglect and good cause existed to extend time to appeal, and that it would have been an abuse of discretion to deny the motion requesting it. Bualuay v. Rano, 11 FSM Intrm. 139, 147 (App. 2002).

The grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Similarly, an appellate reversal of a lower court's denial of a motion to extend, retroactively validates a notice of appeal filed within the thirty-day extension period. Bualuay v. Rano, 11 FSM Intrm. 139, 148 (App. 2002).

A notice of appeal from the Chuuk State Supreme Court trial division must be filed with the clerk of the trial division, not with the clerk of the appellate division, no later than 30 days after the entry of the judgment appealed from, as extended by Rule 26(a). Konman v. Esa, 11 FSM Intrm. 291, 295 & n.5 (Chk. S. Ct. Tr. 2002).

A notice of appeal in civil cases must be filed within 42 days of entry of the order or judgment appealed from, and any motion for an enlargement of time to file a notice of appeal must be filed no later than 30 days after the original 42-day period. Ramp v. Ramp, 12 FSM Intrm. 228, 229 (Pon. 2003).

The good cause standard applies to a motion for the enlargement of time to file a notice of appeal when that notice is filed after the original 42 day period. The good cause standard is more lenient than the excusable neglect standard, to which the rule also makes reference. Ramp v. Ramp, 12 FSM Intrm. 228, 229-30 (Pon. 2003).

A notice of appeal is typically a single page document that names the appellant and the other parties to the proceeding; indicates the order, judgment, or part thereof appealed from; shows the appellate division of the FSM Supreme Court as the court in which the appeal is brought; identifies counsel; and contains a certificate of service. Ramp v. Ramp, 12 FSM Intrm. 228, 230 (Pon. 2003).

When preparation of the notice of appeal would not have presented an insurmountable obstacle even given the distance involved and when there was no calendaring error and the notice for enlargement of time to file a notice of appeal was filed on the 72nd day after the entry of the order appealed from, which was the last day for doing so, while this presents a close question under a good cause standard, after careful consideration the court concludes that good cause for granting the enlargement of time to file the notice of appeal has not been stated. Ramp v. Ramp, 12 FSM Intrm. 228, 230 (Pon. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 278 (App. 2003).

The Chuuk appellate procedure rules require that a notice of appeal be filed with the clerk of the court of the Chuuk State Supreme Court trial division not later than 30 days after entry of judgment. Hartman v. Chuuk, 12 FSM Intrm. 388, 393 n.8 (Chk. S. Ct. Tr. 2004).

By Kosrae statute and State Court Rules of Appellate Procedure, the notice of appeal from Land Court must state specific legal grounds upon which such appeal is based. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 418-19 (Kos. S. Ct. Tr. 2004).

Following review of the transcript and record, appellants may also request to amend the issues stated in the notice of appeal from Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 419 (Kos. S. Ct. Tr. 2004).

The appellants' failure to state the issues on appeal in their notice of appeal is a procedural violation that may be subject to sanctions. Dismissing an appeal on purely procedural grounds is a sanction normally reserved for severe disregarding of the rules resulting in prejudice to the opposing party. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 419 (Kos. S. Ct. Tr. 2004).

Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422 (Kos. S. Ct. Tr. 2004).

There are two filing requirements for a notice of appeal from the Kosrae Land Court: first at the Kosrae State Court and second at the Kosrae Land Court. The first filing requirement actually dockets the appeal, as Kosrae State Court serves as the appellate court for Kosrae Land Court decisions. The second filing requirement does not docket the appeal. It serves the purpose of commencing the preparation of the transcript and record by the Land Court. Thus, an appeal from Kosrae Land Court is timely filed (and the Kosrae State Court has subject matter jurisdiction to hear the appeal) when the notice of appeal is filed with the Kosrae State Court within sixty days of service of the written decision upon the appellants even though there was a two day delay in filing the notice of appeal with the Land Court. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422 (Kos. S. Ct. Tr. 2004).

The appellants' late filing of the copy of the notice of appeal with the Land Court is a procedural violation that may be subject to sanctions. The proper procedure is to file the notice of appeal with Kosrae State Court, and file a copy of the notice of appeal with Kosrae Land Court, both within the sixty day period. When the appellees have not demonstrated any prejudice by the two-day delay, the appellants' failure to file the copy of the notice of appeal with the Land Court within sixty days does not constitute grounds for the appeal's dismissal, only sanctions. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 422-23 (Kos. S. Ct. Tr. 2004).

A notice of appeal from a Land Court decision to the Kosrae State Court must be filed within sixty days of service of the Land Court decision upon the party appealing the decision. State law does not provide any mechanism or authority for extension of the time for filing the notice of appeal beyond the sixty day period. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004).

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. The appeal is then properly dismissed. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004).

When a notice of appeal was not filed within the statutory time period for appeal, the court has no jurisdiction over the appeal and also has no authority to allow filing of the notice of appeal beyond the statutory time period. When a notice of appeal is filed one day after the statutory sixty day period for appeal from Land Court expired, the statutory deadline for filing a notice of appeal cannot be extended, the court does not have jurisdiction over the appeal, and the appeal will be dismissed with prejudice. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27-28 (Kos. S. Ct. Tr. 2004).

Appellants must file a subsequent notice of appeal to perfect their right to appeal any of the issues raised by a later attorney fee award order. Appellants must take the necessary steps to perfect an appeal from the trial division's order awarding attorney's fees and to consolidate that appeal with the pending appeal on the merits. Felix v. Adams, 13 FSM Intrm. 28, 29-30 (App. 2004).

A second notice of appeal adds nothing to an initial notice of appeal, when it purports to appeal the an earlier non-final – and hence nonappealable – order as well as the already appealed final judgment and is therefore nugatory. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 44 (Pon. 2004).

If a timely motion for a new trial on any ground other than newly discovered evidence has been made,

an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. FSM v. Fritz, 13 FSM Intrm. 85, 87-88 (Chk. 2004).

It might have been to a litigant's advantage to file a notice of appeal along with her motion to extend time to appeal since the grant of a motion to extend time to appeal retroactively validates a previously-filed notice of appeal. Goya v. Ramp, 13 FSM Intrm. 100, 104 n.1 (App. 2005).

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

A notice of appeal may be filed in either the trial division or the appellate division. A party has the right to represent herself pro se in the trial division (although that may not always be a good idea) and may file a notice of appeal pro se, but appellate division filings usually require an admitted attorney's signature. Goya v. Ramp, 13 FSM Intrm. 100, 107 & n.7 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on vacation could either 1) draft a notice of appeal that her client could sign and file pro se in the trial division and mail it to her for filing; or 2) draft a motion to extend time to file a notice of appeal that her client could file pro se and mail it to her for filing; or 3) draft a motion to extend time to file a notice of appeal and mail it to the court for filing; or 4) draft a motion to file by facsimile and mail it to the court for filing, and then fax (and mail) a notice of appeal once she and her client have agreed to payment terms for an appeal. Goya v. Ramp, 13 FSM Intrm. 100, 107 (App. 2005).

A motion to extend time to file a notice of appeal filed before the expiration of the 42-day appeal period can be made ex parte unless the court orders otherwise. Goya v. Ramp, 13 FSM Intrm. 100, 107 (App. 2005).

To preserve her client's appeal rights, a counsel off-island on an extended vacation, who learns that her client needs her to file an appeal three days before the end of the 42-day appeal period, could either draft and fax a notice of appeal along with a request to file by fax; or draft and fax to her client a notice of appeal that her client could sign and then file pro se in the trial division; or draft and fax a motion to extend time to appeal and mail it along with a notice of appeal; or draft and mail a motion to extend time to appeal along with a notice of appeal, any of which should obtain results before counsel's scheduled return. Goya v. Ramp, 13 FSM Intrm. 100, 107 (App. 2005).

One factor to consider in ruling on a motion to extend time to file a notice of appeal is the length of the delay. When the length of delay was as long as it could possibly be – to the last day of the 30-day extended period and was under the defendant's counsel's reasonable control because it was caused by counsel's unwillingness (and maybe misperceived inability) to try to file anything while she was on vacation in the U.S. and when, given the number of possible steps counsel could have taken and the minimal amount of effort any of them would have required, counsel did not take any, it seems that the delay was purposeful. Goya v. Ramp, 13 FSM Intrm. 100, 108-09 (App. 2005).

What may, in a close case, constitute good cause or excusable neglect for failure to file a notice of appeal until only one or two days after the 42-day period to appeal has expired, may no longer be good cause or excusable neglect 30 days later. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

When the potential impact on judicial proceedings of granting a motion to extend time to file a notice of appeal that was filed 30 days after the end of the 42-day appeal period, would be to change the 42-day time period to appeal to a 72-day time period where any reason given for not filing a notice of appeal before the 72nd day would suffice, the court will decline to grant the motion. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

When the factors of length of delay and its potential impact on judicial proceedings, reason for the delay

and whether it was within the reasonable control of the movant, and possibly whether the movant acted in good faith, all weigh against a conclusion that excusable neglect was present and only the danger of prejudice factor does not clearly weigh against a movant who filed a motion to extend time to file a notice of appeal thirty days after the end of the 42-day appeal period, the trial court did not abuse its discretion when it concluded that the movant had not shown excusable neglect, and, given the number of available options, both before and after the end of the 42-day period, the trial court did not abuse its discretion when it concluded that the movant had not shown good cause. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

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

Since no notice of appeal was filed for the post-judgment attorney's fee award, the FSM Supreme Court appellate division lacks jurisdiction to review it because in the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

– Parties

Where a party on appeal challenges the intervention in the appeal of another party, and the issue on the merits is decided in favor of the challenging party, no harm is visited on the challenging party by allowing the intervention, and the court is not required to rule on the propriety of that intervention. Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986).

An appellant should include in the caption only those persons or entities party to the appeal. In re Sanction of Woodruff, 9 FSM Intrm. 374, 375 (App. 2000).

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

Appellate Rule 43 generally allows substitution of parties by their successors in interest, either as a result of a party's death, a public officer's replacement, or for other causes. Substitution for other causes is for such things as a party's incompetency, or the transfer of an interest, or the dissolution, acquisition, merger or similar change of a corporate party. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 625-26 (App. 2003).

The common-sense interpretation of the term "necessary" in Appellate Rule 43(b), which reads: "If substitution of a party in the Supreme Court appellate division is necessary for any reason other than death . . . ." is that it means that a party to the suit is unable to continue to litigate, not that an original party has voluntarily chosen to stop litigating, and the most natural reading of the Rule is that it only permits substitutions where a party is incapable of continuing the suit, such as where a party becomes incompetent or a transfer of interest in the company or property in the suit has occurred. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 626 (App. 2003).

When Pohnpei is not a successor in interest to the parties it seeks to substitute for on appeal or a transferee of any of their interests, but was at all times, a party adverse to their interests, and when the parties sought to be substituted for are not incapable of continuing suit, the motion to substitute parties must be denied. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 626 (App. 2003).

A party to a partial adjudication in a consolidated case is an appellee when an adverse party appeals that decision. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 629 (App. 2003).

In a consolidated case, when claims between a plaintiff and the defendants in one of the original cases were dismissed, but the decision on the claims between the plaintiff and the plaintiff in the case consolidated with it remained a part of the consolidated case, the first plaintiff remained a party to the case and would thus be a party to an appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 629 (App. 2003).

Certification by the court to the attorney general that the constitutionality of a statute has been drawn into question and subsequent intervention may occur at any stage of a proceeding. Thus, the FSM could intervene as a matter of right in any appeal of the matter. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 8-9 (Chk. 2003).

The Kosrae State Court ruling that co-tenants were not parties to the case before it because they had not been served the notice of appeal was not plain error. That court correctly ruled. It had no jurisdiction over the co-tenants because no timely notice of appeal was filed as to them. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 278 (App. 2003).

When notice of appeal was filed by the then Chuuk Attorney General was ostensibly on behalf of all the defendants below, all of whom were jointly and severally liable for all or parts of the judgment, but the order in aid of judgment and writ of garnishment being appealed were directed solely against the state and state funds, the other defendants were not real appellants in interest since their only possible interest in the appeal was directly adverse to the state's. This is because if state funds satisfy the judgment then the other defendants' liability is extinguished without any payment by them. It was thus to their advantage that the writ of garnishment against the State was issued and honored. Consequently, the appeal was briefed and argued as if the state was the sole appellant. Chuuk v. Davis, 13 FSM Intrm. 178, 181 n.1 (App. 2005).

– Rehearing

Rehearing denied after review of appellant's petition. Loch v. FSM, 1 FSM Intrm. 595, 595 (App. 1985).

Where the points of law and fact referred to in a petition for rehearing were not overlooked or misapprehended in the previous consideration of the appeal the petition will be denied. Carlos v. FSM, 4 FSM Intrm. 32, 33 (App. 1989).

Where appellants request a rehearing on the grounds that it is no longer equitable that the judgment have prospective application, and neither the appellate order of dismissal nor the judgment in the state court had by their terms any prospective application the motion will be denied. Damarlane v. Pohnpei Transp. Auth. (I), 6 FSM Intrm. 166, 167 (App. 1993).

After an appellate court has issued its opinion it may grant a petition for a rehearing if it has overlooked or misapprehended points of law or fact. Ordinarily, such petitions are summarily denied. Nena v. Kosrae (II), 6 FSM Intrm. 437, 438 (App. 1994).

A motion for reconsideration of denial of rehearing will be considered as a second petition for rehearing, and as such it cannot be granted it unless the court has overlooked or misapprehended points of law or fact. Nena v. Kosrae (III), 6 FSM Intrm. 564, 567 (App. 1994).

A court has the power to enlarge the time to petition for rehearing and to modify an erroneous decision although the time for rehearing has expired, and sometimes may consider petitions for rehearing filed even after rehearing has been denied. Nena v. Kosrae (III), 6 FSM Intrm. 564, 567-68 (App. 1994).

Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 481, 482 (App. 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 481, 484 (App. 1996).

When an appellate court has ruled on those issues necessary to decide the appeal before it and it has neither overlooked nor misapprehended any points of law or fact, it may summarily deny a petition for rehearing. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 554, 554-55 (App. 1996).

Summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. Nahnken of Nett v. United States, 7 FSM Intrm. 612, 613 (App. 1996).

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide this appeal and has neither overlooked nor misapprehended any points of law or fact. Berman v. Santos, 7 FSM Intrm. 658, 659 (App. 1996).

There is no basis on which to grant a motion for rehearing when the court has not overlooked or misapprehended points of law or fact and has not relied on cases not on point and has not deprived appellants of their right to appeal specific costs. Damarlane v. United States, 8 FSM Intrm. 14, 18 (App. 1997).

A summary denial of a petition for rehearing is proper when the court has neither overlooked nor misapprehended any points of law or fact. In re Sanction of Berman, 8 FSM Intrm. 22, 23 (App. 1997).

There is no basis to grant a petition for rehearing when it does not make any argument or raise any issue not previously considered, and the petitioners had ample time to address those arguments during the pendency of the action. Damarlane v. United States, 8 FSM Intrm. 70, 71 (App. 1997).

The court may summarily deny a petition for rehearing and order the mandate issue immediately when it has carefully considered all of the appellants' arguments and has neither overlooked nor misapprehended any points of law or fact. Iriarte v. Etscheit, 8 FSM Intrm. 263, 264 (App. 1998).

A petition for rehearing may be granted if the court has overlooked or misapprehended points of law or fact that may affect the outcome. Ordinarily, petitions for rehearing are summarily denied, but when clarification may be helpful reasons may be given. Rosokow v. Bob, 11 FSM Intrm. 454, 456 (Chk. S. Ct. App. 2003).

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

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

After carefully considering a petition for rehearing and the arguments therein, the court may deny the petition and order the mandate to issue. Panuelo v. Amayo, 12 FSM Intrm. 475, 476 (App. 2004).

– Standard of Review

A criminal sentence may be affirmed on appeal when a review of the record reveals that the sentence

is appropriate. Malakai v. FSM, 1 FSM Intrm. 338, 338 (App. 1983).

In considering challenges that there was insufficient evidence to justify the trial court's findings that the defendant aided and abetted, and is therefore criminally liable for the assaults with dangerous weapons, the FSM Supreme Court recognizes its appellate tribunal's obligation to review the evidence in the light most favorable to the trial court's factual determinations. The standard of review extends to inferences drawn from the evidence as well. Engichy v. FSM, 1 FSM Intrm. 532, 545 (App. 1984).

The standard of review is not whether the appellate court is convinced beyond a reasonable doubt but whether the court can conclude that the trier of fact could, acting reasonably, be convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Engichy v. FSM, 1 FSM Intrm. 532, 546 (App. 1984).

An appellate court should not overrule or set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. Engichy v. FSM, 1 FSM Intrm. 532, 556 (App. 1984).

The trial court's findings will be upheld so long as they rationally reflect evidence which is reasonable and combines with other evidence to present a coherent, believable, overall picture. Engichy v. FSM, 1 FSM Intrm. 532, 557 (App. 1984).

Normally the trial court fashions the remedies and sanctions for failure of a party to comply with discovery requirements. The exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Engichy v. FSM, 1 FSM Intrm. 532, 558 (App. 1984).

The standard to be applied in reviewing a trial court's finding of intention to kill is not whether the appellate court is convinced that there was intention to kill but whether the appellate court believes that the evidence was sufficient to persuade a reasonable trier of fact beyond a reasonable doubt of the intention to kill. Loch v. FSM, 1 FSM Intrm. 566, 575-76 (App. 1984).

The trial court finding of recklessness is a finding of fact which may not be set aside on appeal unless it is clearly erroneous. FSM Civ. R. 52(a). Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 25 (App. 1985).

The appellate process contemplates that any issue brought before an appellate court will first have been ruled upon by a trial judge. Loch v. FSM, 2 FSM Intrm. 234, 236 (App. 1986).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. In the absence of an objection in the trial court the appellate division will refuse to consider the issue. Loney v. FSM, 3 FSM Intrm. 151, 154 (App. 1987).

A conviction for robbery is a finding which can only be reversed if the court's finding is clearly erroneous. Loney v. FSM, 3 FSM Intrm. 151, 155 (App. 1987).

The standard of review on appeal on the issue of the sufficiency of the evidence is very limited – only findings that are clearly erroneous can be set aside. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 165 (App. 1987).

Standard to be applied in reviewing a claim of insufficiency of evidence in a criminal proceeding is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Runmar v. FSM, 3 FSM Intrm. 308, 315 (App. 1988).

The appellate court may notice error, even though not properly raised or preserved in the trial court, where the error affects the substantial rights of a minor under the particular circumstances of a case. In re

Juvenile, 4 FSM Intrm. 161, 164 (App. 1989).

The general rule is that on appeal a party is bound by the theory advanced in the trial court, and cannot urge a ground for relief which was not presented there, particularly where the party had ample opportunity to raise the issues in the trial court instead of presenting them for the first time on appeal. Paul v. Celestine, 4 FSM Intrm. 205, 210 (App. 1990).

In reviewing a sentencing decision of a trial court, an appellate court should follow the standards generally applied in criminal appeals, upholding findings of fact supported by credible evidence but overruling those legal rulings with which the appellate court disagrees. Tammed v. FSM, 4 FSM Intrm. 266, 274 (App. 1990).

Normally the trial court fashions the remedies and sanctions for failure of a party to comply with discovery requirements and the exercise of the trial court's discretion should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Bernardo v. FSM, 4 FSM Intrm. 310, 313 (App. 1990).

For false evidence to lead to reversal of a conviction, there must be some reason to believe that the trier of fact may have been misled and that this may have contributed to the conviction. Bernardo v. FSM, 4 FSM Intrm. 310, 314 (App. 1990).

An appeal from the decision of the trial judge may be only on the grounds of abuse of discretion resulting from the justice exceeding constraints imposed by the parole statute, Pub. L. No. 5-24 (5th Cong., 1st Spec. Sess. 1987). Yalmad v. FSM, 5 FSM Intrm. 32, 34 (App. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM Intrm. 156, 161 (App. 1991).

In a criminal case, the task of an appeals court is to determine whether the trier of fact could reasonably have been convinced of the charge beyond a reasonable doubt by the evidence. Tosie v. FSM, 5 FSM Intrm. 175, 178 (App. 1991).

The test on appeal is not whether the appellate court is convinced beyond a reasonable doubt, but whether the trial court acting reasonably is convinced. Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. FSM Crim. R. 52(a). Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

An issue raised in closing argument at trial can be properly brought before the appellate court. Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

The standard of review on a question of the sufficiency of the evidence is whether it is clearly erroneous. Senda v. Mid-Pac Constr. Co., 5 FSM Intrm. 277, 280 (App. 1992).

In reviewing the sufficiency of evidence to warrant conviction, the issue is whether the evidence, viewed in a light most favorable to the finding, would justify a finder of fact, acting reasonably, to conclude that guilt was established beyond a reasonable doubt. Welson v. FSM, 5 FSM Intrm. 281, 285 (App. 1992).

In reviewing a criminal conviction on appeal the appellate court need not go beyond the standard of review in Engichy v. FSM, 1 FSM Intrm. 532, to require that the test be whether the trier of fact could reasonably conclude that the evidence is inconsistent with every hypothesis of innocence. Jonah v. FSM, 5 FSM Intrm. 308, 310-11 (App. 1992).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary

constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM Intrm. 308, 313 (App. 1992).

In order to overturn the trial judge's denial of a motion to recuse, the appellant must show an abuse of discretion by the trial judge. The appellate court will not merely substitute its judgment for that of the trial judge. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

An issue not raised at trial cannot be introduced for the first time on appeal. Alfons v. FSM, 5 FSM Intrm. 402, 404 (App. 1992).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is whether the appellate panel, in considering the evidence in the light most favorable to the trial court's findings of fact, determines that a reasonable trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. Alfons v. FSM, 5 FSM Intrm. 402, 405 (App. 1992).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. The appeals court cannot substitute its judgment for that of the trial judge but in reviewing the findings it may examine all of the evidence in the record in determining whether the trial court's factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 59 (App. 1993).

Clear error in key factual findings merits setting aside conclusions of law and is one factor indicating incorrect use of discretion. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1993).

Where no motion has been made to amend the complaint at the trial level and the issue was not tried with the express or implied consent of the parties the general rule is that one cannot raise on appeal an issue not presented in the trial court. Nena v. Kosrae (I), 6 FSM Intrm. 251, 253-54 (App. 1993).

Where the trial court found no negligence and the appeal court upon review of the record does not find the trial court's factual findings to be clearly erroneous the trial court's dismissal of the negligence claim will be affirmed. Nena v. Kosrae (I), 6 FSM Intrm. 251, 254 (App. 1993).

Where the trial court's finding that damages were not proven at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wito Clan v. United Church of Christ, 6 FSM Intrm. 291, 292 (App. 1993).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM Intrm. 293, 296 (App. 1993).

In determining whether a trial court's findings are clearly erroneous, an appellate court must construe the evidence in the light most favorable to the appellee. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kinere v. Kosrae, 6 FSM Intrm. 307, 309 (App. 1993).

The fashioning of remedies and sanctions for a party's failure to comply with discovery requirements is a matter within the trial court's discretion and should not be disturbed by an appellate court absent a showing that the trial court's action has unfairly resulted in substantial hardship and prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that

he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

An appellate court should not set aside a trial court's finding of fact where there is credible evidence in the record to support that finding. The trial court, unlike the appellate court, had the opportunity to view the witnesses and the manner of their testimony. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

A claim that a trial court's decision did not address all the issues raised is not a basis for remand as long as the trial judge made a finding of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 350 (App. 1994).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351-52 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351 (App. 1994).

Where a trial court's decision does not state that it reached any conclusion about a certain disputed fact, the appellate court may presume that it was not a basis for the trial court's decision. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 352 (App. 1994).

Appeals of Rule 11 sanctions are reviewed under an abuse of discretion standard. Berman v. Kolonia Town, 6 FSM Intrm. 433, 436 (App. 1994).

The standard of review of a trial court's ruling on a motion for relief from judgment is whether the trial court has abused its discretion. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 445 (App. 1994).

Whether the lower court erred by issuing a preliminary injunction that did not require the return of funds obtained in violation of a TRO involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

Because findings of fact shall not be set aside unless clearly erroneous an appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden to clearly demonstrate error in the trial court's findings is especially strong when the findings are based upon oral testimony because, before reaching its conclusions as to the witnesses' credibility, the trial court had the opportunity to view the witnesses' demeanor as they testified, while the reviewing court has not. Cheni v. Ngusun, 6 FSM Intrm. 544, 546 (Chk. S. Ct. App. 1994).

An appellate court may set aside a trial court's factual findings as clearly erroneous when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Cheni v. Ngusun, 6 FSM Intrm. 544, 547 (Chk. S. Ct. App. 1994).

If no understanding by the parties appears in the record that evidence admitted at trial was aimed at an unpled issue, it is an abuse of discretion for a court to base its decision on issues not pled. An adverse party must have sufficient notice to properly prepare to oppose the claim. Apweteko v. Paneria, 6 FSM Intrm. 554, 557 (Chk. S. Ct. App. 1994).

A court commits reversible error by basing its decision on a theory of recovery that was not raised by the pleadings nor tried by consent or understanding of the parties. Apweteko v. Paneria, 6 FSM Intrm. 554, 558 (Chk. S. Ct. App. 1994).

A trial court's findings of fact shall not be set aside unless clearly erroneous, and the appellate court shall give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Emilios v. Setile, 6 FSM Intrm. 558, 560 (Chk. S. Ct. App. 1994).

A trial court's factual findings are presumed correct. An appellate court must be especially circumspect in reviewing a trial court for clear error when there was conflicting evidence presented on issues of fact because the trial court had the opportunity to observe the witnesses' demeanor while it has not. Emilios v. Setile, 6 FSM Intrm. 558, 560 (Chk. S. Ct. App. 1994).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or that the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm. Emilios v. Setile, 6 FSM Intrm. 558, 561 (Chk. S. Ct. App. 1994).

The standard of review for an appeal from the trial division's determination of an administrative agency appeal is whether the finding of the trial division was justified by substantial evidence of record. FSM v. Moroni, 6 FSM Intrm. 575, 577 (App. 1994).

An issue not presented to and ruled upon by the trial court cannot properly come before the appellate division for review. FSM v. Moroni, 6 FSM Intrm. 575, 579 (App. 1994).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

A court must deny a motion for summary judgment unless the court, viewing the facts presented and the inferences made in the light most favorable to the non-moving party, finds there is no genuine issue as to any material fact. Thus if the appellants can show there was a genuine issue of material fact then the trial court's summary judgment must be reversed. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 48 (App. 1995).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

Issues of law are reviewed *de novo* on appeal. Nanpei v. Kihara, 7 FSM Intrm. 319, 323-24 (App. 1995).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c) – summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, review is *de novo.* The facts must be viewed in the light most favorable to the party against whom judgment was entered. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

Whether a debtor has the ability to comply with an order in aid of judgment is a finding of fact, which will be set aside on appeal only if it is clearly erroneous. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee, but it should not set aside a finding of fact where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996).

Appellate courts may notice plain error where the error affects the substantial rights of the defendant. Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 471, 477 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 489 (App. 1996).

The Chuuk State Supreme Court appellate division will affirm a trial court's findings of fact unless the findings are clearly erroneous. Rosokow v. Chuuk, 7 FSM Intrm. 507, 509 (Chk. S. Ct. App. 1996).

The appellate court applies de novo the same standard in reviewing a trial court's grant of summary judgment as that used by a trial court under Rule 56. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 585-86 (App. 1996).

When reviewing the grant of a motion to dismiss the appellate court must take as true the facts alleged and view them and their reasonable inferences in the light most favorable to the party opposing the dismissal. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 586 (App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 620 (App. 1996).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 621 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 622 (App. 1996).

Rule 11 sanction orders are reviewed under an objective abuse of discretion standard. In re Sanction of Berman, 7 FSM Intrm. 654, 656 (App. 1996).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM Intrm. 1, 4 (App.

1997).

A court grants judgment on the pleadings if, based on contents of the pleadings alone, it is apparent that either an affirmative defense completely bars plaintiff's claim, or that the sole defense relied upon by defendant is insufficient as a matter of law. An appellate court reviews motions for judgments on the pleadings de novo, as it does all rulings of law. Damarlane v. United States, 8 FSM Intrm. 45, 52 (App. 1997).

The appropriate standard of review when reviewing a trial court's finding on sufficiency of the evidence is whether the trial court's finding is clearly erroneous. A finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Damarlane v. United States, 8 FSM Intrm. 45, 53 (App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard, using an objective standard, rather than assessing an attorney's subjective intent. Damarlane v. United States, 8 FSM Intrm. 45, 58 (App. 1997).

In an appeal of a criminal conviction, before the appellate court can conclude that a trial court error was harmless, the court must conclude that it was harmless beyond a reasonable doubt. Yinmed v. Yap, 8 FSM Intrm. 95, 99 (Yap S. Ct. App. 1997).

Rule 11 sanction orders are reviewed under an abuse of discretion standard. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM Intrm. 203, 206 (App. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM Intrm. 203, 207 (App. 1997).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Iriarte v. Etscheit, 8 FSM Intrm. 231, 236 (App. 1998).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion as that initially employed by the trial court under Rule 56(c). Thus, the review is *de novo*. Taulung v. Kosrae, 8 FSM Intrm. 270, 272 (App. 1998).

The appellate division will not set aside findings of fact unless clearly erroneous, and due regard will be given to the trial court's opportunity to judge the credibility of the witnesses. Marcus v. Suka, 8 FSM Intrm. 300a, 300b (Chk. S. Ct. App. 1998).

Due regard must be given to the opportunity of the trial judge to weigh the witnesses' credibility. During the testimony, a trial judge may take into account the witness's appearance, manner, and demeanor while testifying, his apparent frankness and intelligence, his capacity of consecutive narration of acts and events, the probability or improbability of the story related by him, the advantages he appears to have had for gaining accurate or retentiveness of his memory as well as the lapse of time affecting it, and even the intonation of his voice and his positiveness or uncertainty in testifying. It may affect the credibility of a witness that he is expressing his belief as to a particular matter, rather than his knowledge, or that he testifies positively rather than negatively; or that he has made prior statements which are inconsistent with his trial testimony. Marcus v. Suka, 8 FSM Intrm. 300a, 300b-0c (Chk. S. Ct. App. 1998).

To reverse the trial division's findings of fact, the appellate division must find that 1) the trial division's findings are not supported by substantial evidence; 2) there was an erroneous conception by the trial division of the applicable law; and 3) the appellate division has a definite and firm conviction that a mistake has been made. Marcus v. Suka, 8 FSM Intrm. 300a, 300c (Chk. S. Ct. App. 1998).

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. After settlement and approval by the trial justice, this statement of the evidence shall be included by the clerk of the court appealed from in the record on appeal. When appellants have failed to avail themselves of this procedure to secure a record of the evidence for review on appeal such failure on their part gives no grounds for complaint for the absence of a record of the evidence for review by the appellate court. Lewis v. Haruo, 8 FSM Intrm. 300L, 300m (Chk. S. Ct. App. 1998).

Findings of fact will not be set aside unless clearly erroneous, and due regard shall be given to the trial court's opportunity to judge the witnesses' credibility. The appellate court starts its review of a trial court's factual findings by presuming the findings are correct which means that the appellant has the burden to clearly demonstrate error in the trial court's findings. Lewis v. Haruo, 8 FSM Intrm. 300L, 300m-0n (Chk. S. Ct. App. 1998).

The trial court will be affirmed when the appellant, challenging the weight given a witness's uncorroborated testimony, has failed to furnish the appellate court with a means to review all the evidence presented to the trial justice and a nothing is found in a review of the record and briefs to indicate tat the trial justice's factual findings were clearly erroneous. Lewis v. Haruo, 8 FSM Intrm. 300L, 300m-0n (Chk. S. Ct. App. 1998).

In reviewing a criminal conviction against an insufficiency of the evidence challenge, the appellate court must ask whether the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence it had a right to believe and accept as true. Nelson v. Kosrae, 8 FSM Intrm. 397, 401 (App. 1998).

When facts not controverted are admitted, or have been assumed by both parties, the failure to make findings thereof does not necessitate a remand. Nelson v. Kosrae, 8 FSM Intrm. 397, 403-04 (App. 1998).

The proper standard of appellate review for a criminal conviction challenged for insufficiency of evidence is not whether the appellate court believes the defendant is guilty but whether there is evidence sufficient to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard. Palik v. Kosrae, 8 FSM Intrm. 509, 512 (App. 1998).

An appellate court will not set aside a factual finding where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. Palik v. Kosrae, 8 FSM Intrm. 509, 516 (App. 1998).

The standard of review of a trial court's adoption of a special master's report is whether the adoption of the special master's findings was clearly erroneous. This same standard of review applies to a special master's report. Thus, if a special master's report is clearly erroneous, then it, like a trial court opinion, may be set aside. Thomson v. George, 8 FSM Intrm. 517, 521 (App. 1998).

In determining whether a factual finding is clearly erroneous, an appellate court cannot substitute its judgment for that of the fact finder. The trial court's factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Thomson v. George, 8 FSM Intrm. 517, 522 (App. 1998).

Insufficiency of the evidence argument is not available to criminal appellants when a transcript of all

evidence relevant to such finding or conclusion is not included in the record on appeal. Iwenong v. Chuuk, 8 FSM Intrm. 550, 551 (Chk. S. Ct. App. 1998).

When Land Commission has received considerable credible and compelling evidence, the trial division's decision refusing to disturb the Land Commission's findings that there was substantial evidence to support the Land Commission's conclusion will not be overturned. Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998).

An appellant may not complain of an error in his favor in the rendition of a judgment. Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM Intrm. 591, 592 (Chk. S. Ct. App. 1998).

The standard for review of the exercise of discretion by the trial justice is the abuse of discretion standard because the trial judge has the opportunity to observe the demeanor and candor of the witnesses and is in the best position to make the determination on issues of fact. In re Ori, 8 FSM Intrm. 593, 594 (Chk. S. Ct. App. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

A review of the trial court's factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Hartman v. Chuuk, 9 FSM Intrm. 28, 30 (Chk. S. Ct. App. 1999).

When appellants' claim to tidelands has no customary basis and they never had any rights to it, and the only issues raised on appeal, whether the tidelands in question could be transferred without the consent of all the lineage's adult members and whether the trial court's decision allowed American citizens to become owners of Chuukese tidelands, are not material and are hypothetical as to the appellants, the trial court will be affirmed. William v. Muritok, 9 FSM Intrm. 34, 35 (Chk. S. Ct. App. 1999).

When the trial court has carefully observed the demeanor of all the witnesses, the trial court will not be put in error unless its findings of fact are clearly erroneous. William v. Muritok, 9 FSM Intrm. 34, 36 (Chk. S. Ct. App. 1999).

A review of the trial court's factual findings is done under the clearly erroneous standard. The appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome because the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The appellate court does not have the same opportunity to view the witnesses and as a result, it must be especially circumspect in reviewing a trial court for clear error. Sellem v. Maras, 9 FSM Intrm. 36, 38 (Chk. S. Ct. App. 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and

factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM Intrm. 36, 38 (Chk. S. Ct. App. 1999).

When the appellate court finds nothing in the record on appeal that contradicts the master's findings or the High Court judgment previously rendered on the issues of ownership of the land in question and the state trial court judgment appealed from is based solely on the previous High Court decision, the trial court will be affirmed. Bualuay v. Rano, 9 FSM Intrm. 39, 40 (Chk. S. Ct. App. 1999).

If the trial court based the sentence upon the defendant's background and potential, and the nature of the offense, such individualized sentencing decision would be entitled to the deference accorded to findings of fact. Cheida v. FSM, 9 FSM Intrm. 183, 187 (App. 1999).

When an appellant has failed to provide a transcript of the relevant evidence and failed to identify the portions of the record that support his argument, he has failed to demonstrate that the trial court has erred as a matter of law in imposing sentence, and the presumption is that the evidence was sufficient to sustain the trial court's judgment. Cheida v. FSM, 9 FSM Intrm. 183, 189 (App. 1999).

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

In a criminal case, the appellate court may commute, reduce, or suspend the execution of sentence, but when the appellate court has held that the trial court did not abuse its discretion in considering and imposing its sentence on the defendant for the offense committed, it will find no way to commute, reduce, or suspend the sentence. Cheida v. FSM, 9 FSM Intrm. 183, 190 (App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM Intrm. 191, 193 (App. 1999).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's finding is clearly erroneous. When the trial court's finding that damages were not proved at trial is not clearly erroneous the appellate court will not remand to the trial court for further presentation of evidence on that issue. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

Motions the trial court decided as a matter of law are issues of law and are reviewed de novo. Weno v. Stinnett, 9 FSM Intrm. 200, 206 (App. 1999).

The trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful. Weno v. Stinnett, 9 FSM Intrm. 200, 209 (App. 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM Intrm. 200, 210 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM Intrm. 258, 259 (Kos. S. Ct. Tr. 1999).

The standard of review of a summary judgment on appeal is a de novo determination that there was no genuine issue of material fact and that the prevailing party was entitled to judgment as a matter of law. Department of Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 353, 355 (App. 2000).

Motions that the trial court decided as a matter of law are issues of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 410-11 (App. 2000).

Whether a trial court erred in dismissing a complaint for failure to state a claim is an issue of law, which an appellate court reviews de novo. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 411 (App. 2000).

Whether a trial court erred in denying leave to amend a complaint, is usually reviewed on an abuse of discretion standard, but when the denial is based on a legal conclusion, the review is de novo. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 411 (App. 2000).

An appellate court applies the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). An appellate court, viewing the facts in the light most favorable to the party against whom judgment was entered, determines *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 430 (App. 2000).

The standard to be applied in reviewing a criminal conviction against an insufficiency of the evidence challenge is whether the appellate court can conclude that the trier of fact could reasonably have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. The appellate court must review the evidence in the light most favorable to the trial court's factual determination. A trial court's factual findings challenged for insufficiency are reviewed on a clearly erroneous standard, while the appellate court may disagree with and overrule the trial court's conclusions of law. Sander v. FSM, 9 FSM Intrm. 442, 449 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM Intrm. 442, 449 (App. 2000).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 462 (App. 2000).

A trial court's factual findings adequately supported by substantial evidence in the record cannot be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 462 (App. 2000).

The question whether the facts as found (or whether the facts as found which are not clearly erroneous) are sufficient evidence to meet the plaintiff's burden of proof is a question of law distinct from issues relating to the weight of the evidence, and as such a proper issue on appeal. Questions of law are reviewed de novo. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 462 (App. 2000).

A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 462 (App. 2000).

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after a consideration of the entire record, the appellate court is not left with a definite

and firm conviction that a mistake has been made, the appellate court can only affirm. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 463 (App. 2000).

When the trial judge believed one witness's testimony and not another's, and gave an extensive analysis of the testimony before him that led him to that conclusion, there is no reason for the appellate court to disturb his conclusion, since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of their testimony, and the appellate court did not have that opportunity. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 463 (App. 2000).

There are not reasons to find clearly erroneous the trial court's finding that the defendant continued to utilize her IDD service after she requested termination when the trial court had before it evidence that the calls reflected the same pattern as existed throughout the billing period. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 464 (App. 2000).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 464 (App. 2000).

When the question presented is one of law, it is reviewed on a de novo basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 579 (App. 2000).

The standard of review of a court's imposition of sanctions under its inherent powers is for abuse of discretion. This accords with the abuse of discretion standards for review of Rule 11 attorney sanctions and for review of discovery sanctions. In re Sanction of Woodruff, 10 FSM Intrm. 79, 86 (App. 2001).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

An appellate court should not set aside a finding of fact when there is credible evidence in the record to support that finding, in part because the trial court, unlike the appellate court, had the opportunity to view the witnesses' demeanor and the manner of their testimony. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

If, upon reviewing all the evidence in the record, an appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

Issues of law are reviewed de novo on appeal. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

An appellate court cannot substitute its judgment for that of the trial court where the court made findings of such essential facts as provide a basis for the decision. The test as to the adequacy of the findings is whether they are sufficiently comprehensive and pertinent to the issue to form the basis of the decision. Tulensru v. Wakuk, 10 FSM Intrm. 128, 133 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM Intrm. 128, 133 (App. 2001).

Unless the court otherwise specifies, an involuntary dismissal pursuant to Rule 41(b) acts as an adjudication upon the merits, and is generally reviewed for abuse of discretion. Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 137 (App. 2001).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful;

2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 138 (App. 2001).

The abuse of discretion standard is usually applied in reviewing a Rule 41(b) dismissal when there is no substantial dispute over the facts underlying the trial court's determination that the plaintiff had failed to prosecute the action. In such instances the analysis turns instead on whether the circumstances surrounding the delay justify dismissal. Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 138 (App. 2001).

When reviewing a trial court's Rule 41(b) dismissal order on sufficiency of the evidence, the appropriate standard of review is whether the findings of fact are clearly erroneous. A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 138 (App. 2001).

When an appellant takes issue with both the trial court's findings of fact and its subsequent dismissal order, it requires a two tier analysis. The appellate court first reviews the trial court's findings of fact for clear error. Thereafter, it applies the facts found that are not clearly erroneous, together with those shown by the record as undisputed, and reviews the Rule 41(b) dismissal order under an abuse of discretion standard. Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 138 (App. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

The appellate court starts its review of a trial court's factual findings by presuming the findings are correct. This means that an appellant has the burden to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Phillip v. Moses, 10 FSM Intrm. 540, 543 (Chk. S. Ct. App. 2002).

Issues of law are reviewed *de novo*. Phillip v. Moses, 10 FSM Intrm. 540, 543 (Chk. S. Ct. App. 2002).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

When a judgment can be shaped to cure any prejudice to a party absent below, dismissal at the appellate stage is not required. An appellate court may also properly require suitable modification as a condition of affirmance. Phillip v. Moses, 10 FSM Intrm. 540, 546 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Phillip v. Moses, 10 FSM Intrm. 540, 546 (Chk. S. Ct. App. 2002).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

A judge abuses his discretion when his action violates a litigant's right to due process because such

action is clearly unreasonable. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

In a criminal appeal, the appropriate standard of review for sufficiency of the evidence questions is whether, reviewing the evidence in the light most favorable to the trial court's determinations of fact, there is sufficient evidence to convince a reasonable trier of fact of the defendant's guilt beyond a reasonable doubt. Yow v. Yap, 11 FSM Intrm. 63, 65 (Yap S. Ct. App. 2002).

A lower court's grant or denial of an extension of time to file a notice of appeal is an appealable order reviewed under the abuse of discretion standard. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002).

A court may abuse its discretion by an unexplained, lengthy delay or by failure to exercise its discretion within a reasonable time. Bualuay v. Rano, 11 FSM Intrm. 139, 147 (App. 2002).

An appellate court uses the same standard in reviewing the grant or denial of a summary judgment that the trial court initially did. Therefore, if the appellate court concludes that a genuine issue of material fact was present, then it must rule that the summary judgment should have been denied; and if it concludes that a genuine issue is not present, then, viewing the facts in the light most favorable to the nonmovant, it rules *de novo* on whether the movant was entitled to judgment as a matter of law. This is true even when the appeal comes from another appellate court. Bualuay v. Rano, 11 FSM Intrm. 139, 149 (App. 2002).

An appellate court may affirm the trial court's summary judgment on a different theory when the record contains adequate and independent support for that basis. Bualuay v. Rano, 11 FSM Intrm. 139, 150 n.3 (App. 2002).

When a genuine issue of material fact exists about where the boundary between the two halves of a piece of land lies, summary judgment on this issue is not possible, and the trial court's summary judgment concerning the boundary will be vacated, and that issue remanded to the trial court. Bualuay v. Rano, 11 FSM Intrm. 139, 151 (App. 2002).

An appellate court starts its review of a trial court's factual findings by presuming the findings are correct. The appellant's burden is to clearly demonstrate error in the trial court's findings. The reason for this heavy burden is that the trial court had the opportunity to view the witnesses as they testify and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. The reviewing court does not have the same opportunity. Rosokow v. Bob, 11 FSM Intrm. 210, 214 (Chk. S. Ct. App. 2002).

A trial court's factual findings can be overturned only when they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after a consideration of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. Rosokow v. Bob, 11 FSM Intrm. 210, 214 (Chk. S. Ct. App. 2002).

Questions of law are reviewed *de novo*. Rosokow v. Bob, 11 FSM Intrm. 210, 214 (Chk. S. Ct. App. 2002).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM Intrm. 210, 216 (Chk. S. Ct. App. 2002).

The trial court will be affirmed when the appellants have not overcome the presumption that a trial court's findings are correct, and have not met their heavy burden of showing that the trial court's findings were clearly erroneous and when there was substantial evidence in the record to support the trial court's decision that the island belonged to the appellees and a review of the entire record does not leave the appellate court with the definite and firm feeling that a mistake has been made. Rosokow v. Bob, 11 FSM Intrm. 210, 216 (Chk. S. Ct. App. 2002).

The same standard that a trial court uses in its determination of a motion for summary judgment is applied *de novo* by the appellate court. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kosrae v. Skilling, 11 FSM Intrm. 311, 315 (App. 2003).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM Intrm. 311, 315 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

In reviewing the trial court's grant of summary judgment, the appellate court applies the same standard employed by the trial court under Civil Procedure Rule 56. Under that rule, unless a court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the court must deny the motion. In considering a motion for summary judgment, the court views the facts and inferences in the light most favorable to the nonmoving party. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 358 (App. 2003).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 374 (App. 2003).

In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. The reviewing court will set aside a finding of fact only where there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 374 (App. 2003).

An issue on the application of a statutory provision is an issue of law that is reviewed *de novo* on appeal. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 377 (App. 2003).

When the trial court did not make any finding as to what the prior custom and practice had been, the purpose of a remand to the trial division is for it to determine what the prior customary and traditional practice was. The appellate court can make no finding as to what the customary and traditional practice has been concerning Fayu because that finding must first be made by the trial court. Rosokow v. Bob, 11 FSM Intrm. 454, 457 (Chk. S. Ct. App. 2003).

It is not the appellate court's place or function to make factual findings in the first instance. An appellate court may review a trial court's findings for clear error, but it cannot use the trial court record to supplant the trial court and act as fact finder. Rosokow v. Bob, 11 FSM Intrm. 454, 457 (Chk. S. Ct. App. 2003).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 477 (Chk. S. Ct. App. 2003).

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

The issue of whether a trial court erred in issuing an injunction is reviewed using an abuse of discretion standard. FSM v. Udot Municipality, 12 FSM Intrm. 29, 52 (App. 2003).

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

On an appeal from the Kosrae State Court, before considering the appeal's other merits, the appellate court must consider whether the Kosrae State Court should have granted the appellant's motion for a trial *de novo* (instead of conducting a judicial review), since, if he prevails on this point, the appellate court would not consider his other assignments of error. He would be starting afresh with a trial *de novo* before the Kosrae State Court as if nothing had previously happened there. Anton v. Cornelius, 12 FSM Intrm. 280, 286 (App. 2003).

The FSM Supreme Court's standard of review of a Kosrae State Court's judicial review of a Land Commission decision is whether the Kosrae State Court abused its discretion – whether it failed to properly apply its standard of review to the case. Issues of law are reviewed *de novo*. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. George v. Nena, 12 FSM Intrm. 310, 313 (App. 2004).

If, upon viewing all evidence in the record, the appellate court is left with a definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. George v. Nena, 12 FSM Intrm. 310, 313 (App. 2004).

Issues of law are reviewed de novo on appeal. George v. Nena, 12 FSM Intrm. 310, 313 (App. 2004).

When the admissibility of certain evidence is questioned on appeal, the relevant inquiry is whether there is other credible evidence in the record to support the trial court's finding of fact, which an appellate court should not set aside where there is credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. George v. Nena, 12 FSM Intrm. 310, 317 (App. 2004).

The fact that the trial court based its findings of fact in part on a witness's testimony, when he was not subject to cross examination, is not clear error if other credible evidence supports the same findings of fact. George v. Nena, 12 FSM Intrm. 310, 317 (App. 2004).

When, viewing the evidence in the light most favorable to the appellee, the appellate court does not have a definite or firm conviction that any mistake was made by the trial court, it cannot find that the trial court's decision was clearly erroneous. George v. Nena, 12 FSM Intrm. 310, 317 (App. 2004).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM Intrm. 310, 318 (App. 2004).

An issue raised for the first time on appeal is waived. An exception to this rule is in the case of plain error – error that is obvious and substantial and that seriously affects the fairness, integrity, or public reputation of judicial proceedings. George v. Nena, 12 FSM Intrm. 310, 319 (App. 2004).

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Sigrah v. Kosrae, 12 FSM Intrm. 320, 324 (App. 2004).

The question of whether a municipality has the legal authority to impose license fees or taxes solely as a revenue measure is a pure question of law, and on appeal, questions of law are reviewed *de novo*. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 357 (Chk. S. Ct. Tr. 2004).

If, as a matter of law, a state statute preempts any local regulation of the possession and sale of alcoholic beverages, and if the municipality is also precluded from imposing license fees or taxes for revenue purposes only, a municipal conviction for possession and sale without a municipal license must be overturned and the defendant found not guilty of the infraction as a matter of law. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 357 (Chk. S. Ct. Tr. 2004).

In order for the defendant to prevail on appeal, it is necessary to determine whether a municipality has the constitutional or statutory authority to raise revenue by imposing licensing fees and taxes on businesses that engage in alcoholic beverage sales even though the municipality did not raise the issue of its power to impose business license fees or taxes for revenue, rather than regulatory purposes because, as a general rule, a lower court decision will not be reversed if based upon any proper ground. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 358 (Chk. S. Ct. Tr. 2004).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court rationally could have based its decision. Such abuses must be unusual and exceptional; an appeals court will not merely substitute its judgment for that of the trial judge. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

If, on appeal, the Kosrae State Court finds that a Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, the court must remand the case to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23 (Kos. S. Ct. Tr. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the

appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23-24 (Kos. S. Ct. Tr. 2004).

When the Land Court's boundary decision was not based upon substantial evidence, the matter must be remanded to the Land Court with instructions and guidance for re-hearing the matter. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 24 (Kos. S. Ct. Tr. 2004).

A review of the trial court's factual findings is done under the "clearly erroneous" standard and the appellant has the burden to clearly demonstrate error in the trial court's findings. The appellant has a very strong burden to overcome for the reason that the trial court had the opportunity to view the witnesses as they testified and to observe their demeanor before reaching its conclusions as to the witnesses' credibility. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

Any of three conditions are required for the court to find reversible error when the trial court findings are alleged to be clearly erroneous: first, if the trial court findings were not supported by substantial evidence in the record; second, the trial court's factual finding was the result of an erroneous conception of the applicable law; and third, if the appellate court is of firm conviction that a mistake has been made. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

An abuse of discretion by the trial court occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence upon which the court could rationally have based its decision. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

When there were many possible methods by which the situation may have been avoided, the trial court's denial of a motion to extend time to appeal was neither clearly unreasonable, arbitrary, nor fanciful nor was it based on an erroneous conclusion of law and the trial court therefore did not abuse its discretion when it found neither excusable neglect nor good cause to extend time to file a notice of appeal. Goya v. Ramp, 13 FSM Intrm. 100, 109 (App. 2005).

For an appellate court to find that a trial court's finding is in error it must determine that the finding was clearly erroneous. In making this determination the appellate court must view the evidence in the light most favorable to the appellee. The trial court's finding will only be set aside if there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 149 (App. 2005).

The general rule is that an issue not raised below will not be considered for the first time on appeal.

Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

When an appellant failed to raise a state constitutional provision as an argument in its brief but mentioned it at oral argument, the court will not consider it. Chuuk v. Davis, 13 FSM Intrm. 178, 184 n.4 (App. 2005).

When the appellant neither briefed nor argued that part of the trial court's order holding a statute unconstitutional as it applies to a judgment for violations of civil rights, the appellee correctly took the position that this issue was waived and did not address it, and, for these reasons, the court will not consider the issue. Chuuk v. Davis, 13 FSM Intrm. 178, 185 (App. 2005).

– Stay

A stay is normally granted only where the court is persuaded as to the probability of ultimate success of the movant. In re Raitoun, 1 FSM Intrm. 561, 563 (App. 1984).

In determining whether to grant a stay, a single appellate judge, acting alone, must consider whether it is more likely than not that the petitioner would be able to persuade a full appellate panel as to the soundness of his legal position and that there are such special circumstances that the trial court should be mandated to modify its conduct of the trial. In re Raitoun, 1 FSM Intrm. 561, 563 (App. 1984).

A motion to the state appellate division to stay state trial court proceedings pending appellate court issuance of a promised detailed written opinion explaining appellate denial of an earlier petition for writ of mandamus against the trial judge is denied where: 1) there was no presently scheduled proceeding to take place at the trial level although the trial judge had instructed the parties to be prepared to proceed if the writ was denied; 2) an appellate opinion is to be written informing the parties of the reasons for dismissal of the petition for writ of mandamus; 3) the constitutional issues of first impression were resolved in the denial of the writ; 4) a matter that has been ruled upon and completed such that no other action is required except for the issuance of an opinion will not support a motion to stay on the appellate level; and 5) no motion to stay had been requested of the trial court. Etscheit v. Adams, 4 FSM Intrm. 242, 244 (Pon. S. Ct. App. 1990).

In weighing the possibility of success of an application for a writ of mandamus on grounds that one public defender's conflict should be imputed to all lawyers in the Public Defender's office, when the original disqualification is based upon a conflict of the attorney's loyalties because of his familial relationship with the victim, but no issue of confidentiality is raised, and only the issue of loyalty is present, but no showing is made that the other lawyers could not give full loyalty to the client; there exists no substantial possibility of an appellate court granting the writ and a stay of proceedings pending consideration of the application should not be granted. Office of the Public Defender v. Trial Division, 4 FSM Intrm. 252, 254 (App. 1990).

Under FSM Appellate Rule 27(c) a motion for a stay of proceedings pending consideration of a motion for a writ of mandamus to require a trial court to appoint a lawyer other than the Public Defender is denied where there: 1) is no substantial possibility that a full panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented in favor a stay. Office of the Public Defender v. Trial Division, 4 FSM Intrm. 252, 255 (App. 1990).

When an appellant has applied to the appellate division for a stay it normally will be considered by all justices of the appellate division, but in exceptional cases application may be made to and considered by a single justice. The power of the appellate division or a single justice thereof to stay proceedings during the pendency of an appeal is not limited by the Rules of Civil Procedure. Pohnpei v. Ponape Constr. Co., 6 FSM Intrm. 221, 222 (App. 1993).

The purpose of requiring a supersedeas bond for a stay is to protect the interests of the appellees. A bond protects the appellees by providing a fund out of which it may be paid if the money judgment is affirmed, and it meets the concerns of the appellee that the appellant might flee the jurisdiction or conceal or dissipate assets so as to render itself judgment-proof. The latter concerns are not present when the appellant is a state.

Pohnpei v. Ponape Constr. Co., 6 FSM Intrm. 221, 223 (App. 1993).

A court may modify an injunction to preserve the status quo during the pendency of an appeal. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 276-77 (Pon. 1993).

While a supersedeas bond is a prerequisite to granting a stay from a money judgment, no such bond is required in order to obtain a modification of an injunction pending appeal. It may be granted upon such terms as to bond or otherwise as the court considers for the security of the adverse party's rights. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 277 (Pon. 1993).

The criteria for granting a stay pending appeal under Rule 62 are: 1) whether the appellant has shown that without the stay he will be irreparably harmed; 2) whether issuance of the stay would substantially harm other parties interested in the proceedings; 3) whether the public interest would be served by granting a stay; and 4) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 277-78 (Pon. 1993).

When summary judgment is granted enjoining trespassing farmers, removing the farmers from the land while their appeal is pending might more substantially alter the status quo than a stay allowing them to remain on the land. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 276, 278 (Pon. 1993).

A stay on appeal may be granted even when the moving party has less than a 50% chance of success if the question is a difficult one, or an issue of first impression about which respectable minds might differ. Ponape Enterprises Co. v. Luzama, 6 FSM Intrm. 274, 279 (Pon. 1993).

An appellant may apply to the trial division for a stay of judgment. If the stay is denied by the trial division he may apply to the appellate division. If the stay is granted and its terms seem onerous, the petitioner may apply to the appellate division for a modification of the stay, and may also request an expedited briefing schedule. Senda v. Trial Division, 6 FSM Intrm. 336, 338 (App. 1994).

The FSM Code provision authorizing the general powers of the Supreme Court gives the court the authority to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 414 (Pon. 1994).

Factors for a court to consider in determining it whether should exercise its discretion to grant a stay of proceedings in one case pending the outcome of another case which addresses the same or similar issues include whether judicial economy will be furthered by a stay because the cases on appeal may have claim or issue preclusive effect on the case to be stayed; the balance of the competing interests; the orderly administration of justice and whether the case is one of great public importance. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 414 (Pon. 1994).

A stay should be granted in one case pending the outcome of another case on appeal which addresses the same or similar issues, when it is in the interests of avoiding the waste of judicial resources, managing the court's calendar, sparing the parties unnecessary litigation efforts, and avoiding inconsistent or confusing outcomes, especially if granting the stay will not adversely affect the parties opposing the stay to any substantial extent because they are also parties to the other case on appeal. Ponape Enterprises Co. v. Bergen, 6 FSM Intrm. 411, 415-16 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 1994).

The rule requiring a supersedeas bond to be posted before a stay may granted pending appeal is applicable only to appeals from money judgments. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 1994).

A stay of judgment by a trial court is an action in aid of the appeal. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

A stay of a money judgment pending appeal is effective when the appellant's supersedeas bond is approved by the court. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

In exceptional cases when consideration by the appellate panel would be impracticable due to time requirements, an application for a stay may be made to and considered by a single Chuuk State Supreme Court justice. In re Contempt of Umwech, 8 FSM Intrm. 20, 21 (Chk. S. Ct. App. 1997).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM Intrm. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM Intrm. 20, 22 (Chk. S. Ct. App. 1997).

A single justice may consider a motion for a stay when time requirements and geographical dispersion make it impractical for it to be considered by the full appellate panel. In re Recall Election, 8 FSM Intrm. 71, 73-74 (App. 1997).

A motion for a stay will be denied when it does not show that application to the court appealed from is impractical or that the court appealed from has denied the relief requested accompanied by that court's reasons for the denial. In re Recall Election, 8 FSM Intrm. 71, 74 (App. 1997).

The FSM Supreme Court appellate division has no authority to review an application for release from jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM Intrm. 297, 298-99 (App. 1998).

When a person convicted of a crime appeals only his jail sentence and seeks a stay of that sentence pending appeal, the trial court will grant a stay only if it is reasonably assured that the appellant will not flee or pose a danger to any other person or to the community, and that the appeal is not for purpose of delay, and raises a substantial question of law or fact likely to result in a sentence that does not include a term of imprisonment. The burden of establishing these criteria rests with the defendant. FSM v. Nimwes, 8 FSM Intrm. 299, 300 (Chk. 1998).

The request of a defendant, who is appealing only his jail sentence, for a stay pending appeal will be denied because his allegation that his four-month jail sentence for misappropriating to his own use $17,125 of government money is cruel and unusual punishment and an abuse of the judge's discretion when he has diabetes does not raise a substantial question likely to result in a sentence without a jail term and raises the inference that the appeal was brought for the purpose of delay. FSM v. Nimwes, 8 FSM Intrm. 299, 300 (Chk. 1998).

A sentence of imprisonment will be stayed if an appeal is taken to the Chuuk State Supreme Court appellate division and the defendant is released pending disposition of appeal if application for release is made in the first instance in the court appealed from. Iwenong v. Chuuk, 8 FSM Intrm. 550, 551-52 (Chk. S. Ct. App. 1998).

Motions to stay proceedings during an appeal are governed by Rule 62, CSSC Rules of Civil Procedure, which is near identical to the corresponding rule of the FSM Supreme Court and the Federal rules of the

United States. The criteria for granting a motion to stay pending appeal are the same as for equity jurisdiction for the granting of an injunction. Pius v. Chuuk State Election Comm'n, 8 FSM Intrm. 570, 571 (Chk. S. Ct. App. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM Intrm. 570, 571 (Chk. S. Ct. App. 1998).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM Intrm. 80, 81 (Chk. S. Ct. App. 1999).

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

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM Intrm. 103, 106 (Kos. S. Ct. Tr. 1999).

When a stay application to the court appealed from is not practicable because the trial justice is unavailable and ill and out of the country for an extended time an appellant may apply for a stay in the appellate division. Department of Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 353, 354-55 (App. 2000).

One reason to grant a stay on appeal is if the court is persuaded that the appellant will prevail on the merits of the appeal. Department of Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 353, 355 (App. 2000).

Generally, there are four factors to weigh before granting a stay pending appeal: 1) whether the appellant has made a strong showing that he is likely to prevail on the merits of the appeal; 2) whether the appellant has shown that without the stay he will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings; and 4) whether the public interest would be served by granting a stay. Ordinarily, the first factor is the most important, but a stay may be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay. Department of Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 353, 355 (App. 2000).

A stay will be denied when the appellant has not made a strong showing that it is likely to prevail on the merits of its claim that a use tax is permitted under the FSM Constitution and has not shown that its injury is irreparable, even though there might be no harm to the only other party to the appeal, and the public interest favors neither granting nor denying a stay. Department of Treasury v. FSM Telcomm. Corp., 9 FSM Intrm. 353, 355-56 (App. 2000).

FSM Appellate Procedure Rule 9(c) sets forth the criteria for release pending an appeal from a criminal conviction. The burden of establishing the requisite criteria rests with the defendant. FSM v. Akapito, 10 FSM Intrm. 255, 256 (Chk. 2001).

Among the criteria the defendant must show to be released pending appeal when the appeal is only of his sentence of imprisonment is that the appeal is not for the purpose of delay and that it raises a substantial

question of law or fact likely to result in a sentence that does not include a term of imprisonment. FSM v. Akapito, 10 FSM Intrm. 255, 256 (Chk. 2001).

A defendant appealing his sentence has utterly failed to meet the criteria for release pending appeal when neither his moving papers nor argument raised a substantial question of law or fact likely to result in a sentence not including a term of imprisonment. FSM v. Akapito, 10 FSM Intrm. 255, 256 (Chk. 2001).

That the defendant would then be free, in mind and body, to assist his counsel in the preparation of his appeal is not a substantial question of law or fact justifying release pending an appeal. FSM v. Akapito, 10 FSM Intrm. 255, 257 (Chk. 2001).

When an appeal of a criminal sentence does not raise any substantial question likely to obtain the result the appellant seeks, the court may draw the inference that it was brought for the purpose of delay. FSM v. Akapito, 10 FSM Intrm. 255, 257 (Chk. 2001).

The court may order that, before a stay pending appeal will be granted in the appellant's favor, the appellant must post an appropriate cash bond which would fairly compensate the appellee should the appeal be unsuccessful. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 296, 298 (Pon. 2001).

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

A modification of a permanent injunction pending appeal may be conditioned upon the posting of an appeal bond. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 296, 298 (Pon. 2001).

Interest earned on an appellate bond placed in an interest-bearing account will be given to the party entitled to the principal. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 296, 298 (Pon. 2001).

The term "bond" in an appeal context includes more than the supersedeas bond in Civil Rule 62. One example is the bond for costs in Appellate Rule 7; another is the bond that may be required under Appellate Rule 8(b) (which does not use the word "supersedeas") when a motion for stay is brought in the appropriate circumstances in the appellate division. Regardless of the specific type of bond, the general principles applicable to appeal bonds and undertakings also apply in most cases to supersedeas bonds. Amayo v. MJ Co., 10 FSM Intrm. 427, 428 (Pon. 2001).

In jurisdictions having statutory requirements for a supersedeas bond, a competent surety is ordinarily required. A surety is one who undertakes to pay money in the event that his principal fails therein, and who is primarily liable for the payment of debt or performance of the obligation of another. The appellant himself is generally not competent to stand as a surety on an appeal bond. Amayo v. MJ Co., 10 FSM Intrm. 427, 428 (Pon. 2001).

A supersedeas bond's purpose is to protect the appellees' interest by providing a fund out of which a judgment can be paid if it is affirmed on appeal. It provides absolute security to the party who is affected by the appeal. The bond also protects the judgment debtor from levy while the appeal takes its course. Amayo v. MJ Co., 10 FSM Intrm. 427, 428-29 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM Intrm. 427, 429 (Pon. 2001).

Due to the lack of an established Pohnpei real estate market, a mortgage offered in lieu of a supersedeas bond does not provide absolute security to an appellee. Realistically, the lack of a ready market for property also precludes a professional surety either inside or outside the FSM from accepting the property as bond collateral. Amayo v. MJ Co., 10 FSM Intrm. 427, 429 (Pon. 2001).

When a supersedeas bond from a qualified surety is presented to the court, the appropriate vetting and assessment of financial information by a competent surety will have taken place, thus obviating the need for a court to engage in that process. Amayo v. MJ Co., 10 FSM Intrm. 433, 434 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM Intrm. 433, 434 (Pon. 2001).

When no stay has been ordered in a pending appeal, alien judgment-creditors may suggest, although no rule or other authority requires this, that any sums resulting from a levy on the judgment be deposited with the court in an interest bearing account, and the court, aware of the creditors' great financial distress resulting from the injury sued upon may order a portion of the money deposited to be paid over to plaintiffs' counsel. Amayo v. MJ Co., 10 FSM Intrm. 433, 435 (Pon. 2001).

A case will not be stayed pending the appeal of another when two different accidents, involving different victims, provide the bases for the two cases. Each case must ultimately rest on its facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 463, 465 (Pon. 2001).

An appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in Civil Rule 62(a). The stay is effective when the supersedeas bond is approved by the court. Panuelo v. Amayo, 10 FSM Intrm. 558, 560, 563 (App. 2002).

An application for a stay of the judgment appealed from pending appeal must ordinarily in the first instance be made in the court appealed from, but a motion for such relief may be made to the appellate division or a justice thereof when the motion shows that: 1) application to the court appealed from for the relief sought is not practicable; 2) that the court appealed from has denied an application; or 3) that the court appealed from has failed to afford the relief which the applicant requested, with any reasons given by that court for its actions. Panuelo v. Amayo, 10 FSM Intrm. 558, 560 (App. 2002).

A motion in the appellate division to stay will normally be considered by all justices of the court eligible to act with the appellate division in the case, but in exceptional circumstances when such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single FSM Supreme Court justice. Panuelo v. Amayo, 10 FSM Intrm. 558, 560 (App. 2002).

The purpose of a supersedeas bond is to protect the prevailing party below pending the appeal. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

Civil Rule 62 does not limit the power of the appellate division, or a single justice thereof, to stay proceedings during the pendency of an appeal. The appellate division, or a justice thereof, may make any order appropriate to preserve the status quo. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

Because there is very little FSM law governing supersedeas bonds, the FSM Supreme Court may consult the laws of the United States for guidance, as the civil procedure rules in the United States district courts related to supersedeas bonds are similar to those in the FSM, but the court must also take into account the circumstances in the FSM, and independently consider suitability of the U.S. courts' reasoning for application in the FSM. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

The amount of a supersedeas bond typically takes into account the amount needed to satisfy the judgment appealed from, as well as costs, interest, and any damages which may be caused by the stay pending appeal. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

While reference to U.S. law is helpful in enunciating general principals regarding posting of supersedeas bonds, the reality of the financial markets in the FSM requires that the established U.S. requirement of posting of a full supersedeas bond, in cash or by a cash-backed surety, receive additional scrutiny. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

When, given the general unavailability of cash-backed sureties in the FSM, an appellant would essentially be required to liquidate his several businesses in order to post a full cash bond, and in the absence of a stay, writs of execution would be enforced against appellant's property before his appeal is resolved, and when the public interest would also be served by allowing appellant the opportunity to provide alternative security, the appellate division may order an alternative bond of $50,000 cash plus a substantial mortgage. Panuelo v. Amayo, 10 FSM Intrm. 558, 564-65 (App. 2002).

In some cases, an abuse of discretion may be found when the trial court rejects, as an alternative to a full cash bond, a supersedeas bond of which a portion of the bond is in cash and a portion is in the form of a property mortgage. Panuelo v. Amayo, 11 FSM Intrm. 83, 85 (App. 2002).

When the appellees' submission for partial distribution of the appellant's supersedeas bond complies with a single justice's previous orders concerning client contact, lost wages, and expenses incurred, the court will release the previously-ordered $20,000 distribution plus the pro rata interest on that amount. Panuelo v. Amayo, 11 FSM Intrm. 205, 207-08 & n.1 (App. 2002).

The contention – that once a stay is issued the matter falls within the appellate division's jurisdiction, and the trial court is deprived of all jurisdiction to modify or vacate its stay – cannot be sustained. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay. The stay is effective when the court approves the supersedeas bond. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court retains jurisdiction over the stay, even during the pendency of an appeal. The only time the trial division loses jurisdiction over the issue is when a stay is denied, which denial permits the appellant to seek a stay from the appellate division. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

Jurisdiction over a stay remains in the trial court until such time as the trial court approves a supersedeas bond. This is so even after the notice of appeal is filed, and until approval of the bond, whenever that may occur. By failing to give a bond sufficient to obtain the trial court's approval, the appellant never obtains his right to a stay. Only the trial division has jurisdiction, in the first instance, to approve the bond. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

The trial court's power to order a stay of execution, and by implication to deny a stay, continues throughout the appeal's pendency, until the appellate division's mandate issues. The trial court's power to grant a stay is invested in the trial court by virtue of its original jurisdiction over the case and continues to reside in the trial court until such time as the court of appeals issues its mandate. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

An appellant cannot argue that the issuance of a stay would not preserve the *status quo* when it would

permit the appellant to reside in appellee's property, rent free, and without any obligation to pay rent, until an appellate session can be convened, and the appeal decided; or that a stay of execution that has not yet to come into effect as a result of the appellant's failure to offer a bond sufficient to protect the plaintiff's interests pending appeal could permit a continuing trespass. Konman v. Esa, 11 FSM Intrm. 291, 296-97 (Chk. S. Ct. Tr. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM Intrm. 291, 297 (Chk. S. Ct. Tr. 2002).

In order for the court to stay execution of a judgment, it is necessary for the defendant to offer a supersedeas bond to the court. That bond must be in a form, and in a sum sufficient to protect the plaintiff's interests, in the event that the defendant's appeal is unsuccessful. The only supersedeas bond which the court would find sufficient in form and amount, under the circumstances, would be a cash bond in a sum that would cover the premises's rental value during the defendant's wrongful occupation thereof, and would also cover any additional damages which plaintiff might prove upon remand from the appellate division. Konman v. Esa, 11 FSM Intrm. 291, 297 (Chk. S. Ct. Tr. 2002).

If no supersedeas bond is deposited with the court as required by its order, no stay shall be considered as having issued, and the plaintiff shall be free to seek enforcement of her judgment against the defendant, according to any lawful means at her disposal. Konman v. Esa, 11 FSM Intrm. 291, 298 (Chk. S. Ct. Tr. 2002).

Since an order granting a change of venue is not appealable, no stay is warranted while the defendant seeks its review in the appellate division. FSM v. Wainit, 11 FSM Intrm. 411, 412 (Pon. 2003).

When, given the appellate cases' unusual posture, the appellate division determines that it is appropriate to apply Appellate Procedure Rule 2, which allows it, for good cause shown, to suspend in a particular case the Appellate Rules' usual requirements and order proceedings in accordance with its direction and when it is within the court's inherent power to ensure the efficient administration of justice, which may be hindered if trial were to start before it ruled on the question presented, it may stay trial in the case below pending further notice. Wainit v. FSM, 11 FSM Intrm. 568, 569 (App. 2003).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 7 (Pon. 2003).

The four factors that a court will consider in granting or denying a stay on appeal are: whether the applicant has shown that without the stay he will suffer irreparable harm; whether the stay would substantially harm other parties interested in the proceeding; whether the public interest would be served by a stay; and whether the applicant has shown that he is likely to prevail on the merits of the appeal. As to the last factor, a stay may be granted even if there is less than a 50% chance of prevailing on appeal when the issue is difficult, or when it is one of first impression over which reasonable minds may reach different conclusions. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 7 (Chk. 2003).

No stay pending appeal is warranted when the defendant will not suffer irreparable harm if no stay is granted because it undeniably owes the judgments, as liability is not an issue on appeal since the only issue for appeal purposes is how the judgments will be paid; when the stay would harm the plaintiffs by further delaying exoneration of the constitutional rights that the judgments are intended to vindicate; when all citizens have an interest in preserving the constitutional rights guaranteed to all and would be disserved by the further delay in the judgments' satisfaction; and when the issue presented, although one of first impression, does not

alone compel the conclusion that a stay should issue in light of the other considerations – a material one being that liability is not at issue. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 7-8 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to rule 60. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 12 (Chk. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM Intrm. 201, 203 (Chk. 2003).

There is no good reason to stay the completion of discovery in a criminal case while appellate review is sought when the defendant has already made his discovery request and because the amount of discovery that can be requested in a criminal case is so limited and the government cannot even request discovery unless the defendant has already done so, it is difficult to conceive of any circumstances under which staying discovery in a criminal case would be proper. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

As jeopardy does not attach in a criminal case until the first witness is sworn in to testify at trial, the trial court will therefore not stay pretrial proceedings while the defendant seeks appellate review because rulings on pretrial motions not yet filed may dispose of the case entirely in the defendant's favor. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

The only stay of a pending criminal case while appellate review is sought that the trial court could consider granting would be a stay of trial. For a stay to be granted, the appeal must be meritorious – a substantial likelihood that the applicant will prevail. A stay is normally granted only where the court is persuaded as to the probability of the movant's ultimate success. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

An issue appealed is not meritorious and the method of seeking appellate review is not meritorious solely because it is a matter of first impression for the appellate division. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

In order for a defendant to be granted a stay of a criminal proceeding while he seeks interlocutory appellate review, he must show that his appeal or his petition is meritorious and has a substantial likelihood of success on the merits. FSM v. Wainit, 12 FSM Intrm. 201, 205 (Chk. 2003).

When defendants have not posted a supersedeas bond and have not stated any basis upon which the court could exercise its discretion to stay the money judgment against them in absence of a bond, they are not entitled to a stay under FSM Civil Rule 62(d). Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 350 (Pon. 2004).

That defendants claim that they owe a different amount than that for which they were found liable and thus still contest liability is not a basis for a stay pending the appeal when the plaintiffs proved by a preponderance of evidence the amount that the defendants owe to them. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 350 (Pon. 2004).

Even assuming without deciding for the sake of a motion to stay that the FSM Development Bank is an agency of the national government, FSM Civil Rule 62(e) contains two conditions precedent that must occur in order for the requirement of an appeal bond or other security to be dispensed with: the appeal must be taken by the national government or an agency thereof, and the enforcement of the judgment must have been

stayed. Only then does the waiver of the bond requirement apply. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 351 (Pon. 2004).

Under the plain reading of Rule 62(e), the court must first determine whether the judgment against the FSM Development Bank should be stayed pending appeal. If the judgment is stayed then, and only then, may the bank avail itself of the waiver of a bond or other security provided for by Rule 62(e). Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 352 (Pon. 2004).

Ours is a developing nation, and preserving the balance among our government's three branches established by our Constitution is of utmost importance. The FSM Supreme Court must remain sensitive to this concern. To read Rule 62 subparagraphs (d) and (e) to give the FSM national government or an agency thereof a blanket right to stay any judgment of this court, regardless of the terms of the stay and regardless of the appeal's merit or lack thereof, would be to create a constitutional puzzle. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 352-53 (Pon. 2004).

The court is disinclined to exercise its discretion to grant a stay in the appellant's favor pending the appeal when that party unsuccessfully attempted to evade the discovery process by refusing, willfully and in bad faith, to disclose a document that the court has found established its liability to the plaintiffs as a matter of law, when its conduct generated a mountainous court file that resulted in the waste of the time of all involved, as well as increased costs to the other litigants, and when it could engage in such conduct with impunity without concern for whether its conduct made economic sense in terms of legal expenses incurred since it employs house counsel. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 353 (Pon. 2004).

Appellate Rule 9(c) sets the criteria for release pending appeal in a criminal case, and the burden of establishing the requisite criteria rests with the defendant. FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004).

To grant a release pending appeal, the court first must conclude that one or more release conditions will reasonably assure that the appellant will not flee or pose a danger to another person or the community, and then the movant must establish that the appeal is not for purpose of delay and that it raises a substantial question of law or fact likely to result in either 1) a reversal; 2) an order for a new trial; 3) a sentence that does not include a term of imprisonment; or 4) a reduced sentence to a term of imprisonment less than the total of the time already served. FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004).

The release of a prisoner is not automatic once a notice of appeal and a motion for release have been filed. The prisoner must establish the requisite criteria exist under Appellate Rule 9(c). FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004).

When a criminal defendant wants to be released pending appeal but his appeal does not raise any substantial question likely to obtain the result sought by the appeal, the court may draw the inference that the appeal was brought for the purpose of delay. FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004).

A stay of sentence pending appeal is not automatic upon the filing of a notice of appeal and a motion to stay, but rests on the court's discretion. FSM v. Moses, 12 FSM Intrm. 509, 511 (Chk. 2004).

The court may, in its discretion, stay pending appeal upon such terms as the court deems proper, an order for restitution, but the court may require the defendant pending appeal to deposit the whole or any part of the fine, restitution or costs in the registry of the trial court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets. The court may invite the movant and the government to submit their views on the advisability, if restitution is stayed, of an order that while the appeal is pending the restitution be paid into the court's registry to remain there in an interest-bearing account until the appeal is decided. FSM v. Moses, 12 FSM Intrm. 509, 512 (Chk. 2004).

An order placing a defendant on probation may be stayed if an appeal is taken. If not stayed, the court

shall specify when the term of probation will commence. If the order is stayed, the court must fix the terms of the stay. FSM v. Moses, 12 FSM Intrm. 509, 512 (Chk. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM Intrm. 523, 524 (App. 2004).

An application for a stay of the judgment or order of the court appealed from pending appeal must ordinarily be made in the first instance in the court appealed from. Thus the trial court retains jurisdiction over the case for deciding a motion to stay. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 43 (Pon. 2004).

When the case is one of public importance involving a novel issue of law, the court will consider four factors in determining whether to grant a stay pending appeal: 1) whether a strong showing has been made of the likelihood that the appellant will be successful on appeal; 2) whether irreparable injury to the appellant will result in the absence of a stay; 3) whether other interested parties would be harmed by the stay; and 4) whether staying the judgment on appeal would serve the public interest. In the usual case the first factor is the most important, but a stay is also appropriate in a substantial case when the equities reflected in the remaining factors weigh heavily in favor of granting the stay. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 43 (Pon. 2004).

Under Rule 38(a)(4), when a sentence is probation and an appeal is taken, an automatic stay pending appeal remains in effect until a starting date is set for probation to begin. If a motion to stay is filed, the court would not set a starting date until the defendant's motion for a stay was either granted (in which case the terms of that stay order would take effect) or denied (in which case a starting date would be set for probation to begin). Conceivably, the court could set a starting date that came before the court was able to rule on the motion to stay. In such a circumstance, the probation would start and then a stay would be either granted or denied. FSM v. Fritz, 13 FSM Intrm. 88, 91-92 (Chk. 2004).

ARBITRATION

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 407 (Pon. 2001).

The filing of a lawsuit constitutes a party's waiver of arbitration only if that party substantially invokes the litigation machinery and the other party is prejudiced as a result. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 407 (Pon. 2001).

Compelling arbitration will not subject either party to duplicative litigation of the issues in dispute when the plaintiff did not substantially invoke the litigation machinery and there was no prejudice to the defendant from the filing of the court case because the plaintiff's initial complaint was dismissed for failure to comply with the statute of limitations for contract actions, because the defendant never answered the complaint, but merely filed a motion to dismiss; and because the court never addressed any of the substantive issues. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 407-08 (Pon. 2001).

The prevailing modern view of arbitration is that, even in the absence of a statute, courts generally favor arbitration, and every reasonable presumption will be indulged to uphold arbitration proceedings. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 408 (Pon. 2001).

Agreements to arbitrate need not even be in any particular form, as long as the parties have agreed to do so by clear language, and it appears that the intent of the parties was to submit their dispute to arbitrators and be bound by the arbitrators' decision. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 408 (Pon. 2001).

An agreement to arbitrate future contractual disputes is specifically enforceable, even if one party attempts to revoke the agreement. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 408 (Pon. 2001).

Requiring parties to resolve their disputes outside of court does not replace the judiciary's role in resolving disputes; it complements judicial proceedings by allowing the parties to freely contract to resolve their disputes in other forums, with the confidence that the court will enforce such agreements. When a contract's clear language evidences the parties' intent to submit disputes to arbitration, the court will hold them to their agreement and specifically enforce the contract's arbitration provisions. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 408 (Pon. 2001).

Non-judicial settlement of disputes is entirely consistent with Micronesian customs and traditions, whether it be by arbitration or some other form of alternative dispute resolution. Beyond customary considerations, international commercial disputes may best be resolved by private individuals, selected by the parties, who are knowledgeable in the trade and industry in which the commercial enterprises operate. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 408-09 (Pon. 2001).

The FSM Supreme Court adopts the modern view of common law of arbitration and specifically enforces the parties' contract to arbitrate. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 409 (Pon. 2001).

ATTACHMENT AND EXECUTION

The statutes concerning writs of execution protect certain property of the debtor from execution, but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. Bank of Guam v. Island Hardware, Inc., 2 FSM Intrm. 281, 285 (Pon. 1986).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. Bank of Guam v. Island Hardware, Inc., 2 FSM Intrm. 281, 285 (Pon. 1986).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 303 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 306 (Pon. 1988).

Writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 306 (Pon. 1988).

Where it becomes apparent that claims or creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 306 (Pon. 1988).

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

Hardware, 3 FSM Intrm. 365, 368 (Pon. 1988).

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. In re Pacific Islands Distrib. Co., 3 FSM Intrm. 575, 584 (Pon. 1988).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM Intrm. 130, 136 (Chk. S. Ct. Tr. 1991).

The statutory right of a judgment creditor to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-right rule according to the dates of the individual parties' writs. In re Island Hardware, Inc., 5 FSM Intrm. 170, 173 (App. 1991).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. Western Sales Trading Co. v. Ponape Federation of Coop. Ass'ns, 6 FSM Intrm. 592, 593 (Pon. 1994).

A writ of attachment is a process by which property is seized and held to satisfy an established debt or prospective judgment and may only issue against the property of a defendant debtor. The property of a third party, to which the debtor has no possessory rights, may not be seized, held, and eventually sold to satisfy the obligations of the debtor. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM Intrm. 37, 38 (Pon. 1995).

That a defendant debtor is a shareholder of a corporation that might receive a favorable settlement in the future and might pay a dividend to its shareholders does not entitle creditors to attach that corporation's assets. Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping, 7 FSM Intrm. 37, 39 (Pon. 1995).

A writ of execution may issue without seriously exploring other possible means of satisfying the judgment. House of Travel v. Neth, 7 FSM Intrm. 228, 229 (Pon. 1995).

Execution may be had against a judgment debtor's non-exempt personal property, not against his interests in land. House of Travel v. Neth, 7 FSM Intrm. 228, 229 (Pon. 1995).

Property may not be taken by the government, even in aid of a judgment, without due process of law. In executing the writ, due process of law may be assured by directing the executing officer to comply strictly with the statutory provisions for levying a writ of execution. House of Travel v. Neth, 7 FSM Intrm. 228, 229-30 (Pon. 1995).

The right to prejudgment seizure must exist by the law of the state in which the action is pending. In the absence of state law, no remedy is available under Rule 64. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 662 (Pon. 1996).

Under Pohnpei law a court may issue writs of attachment, for special cause shown, supported by a statement under oath. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 662 (Pon. 1996).

Attachment is an extraordinary, prejudgment remedy, which is purely ancillary to the main suit, has nothing to do with the merits, and is a summary, anticipatory method of impounding defendant's assets to facilitate collection of the judgment against him, if and when one is obtained. Attachment did not exist at common law, and is created by statute. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 662 (Pon. 1996).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 662 (Pon. 1996).

Under Pohnpei law attachment appears to be available in any suit for collection of money, but not available in judgments affecting land, and the statute requires only that "special cause" be shown for the issuance of a writ of attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 662 (Pon. 1996).

The existence of a sale of some of a debtor's assets is not special cause sufficient to grant a request for attachment. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 663 (Pon. 1996).

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

Process to enforce payment of a money judgment is by writ of execution, in accordance with the practice and procedure of the state in which the court is held, except that an FSM statute governs to the extent it is applicable. Louis v. Kutta, 8 FSM Intrm. 208, 210-11 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM Intrm. 208, 213 (Chk. 1997).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 304 (Chk. 1998).

A writ of execution issued in violation of statute, against the property of a non-party in a case for which no judgment has been issued and in which the judge should have recused himself is a wrongfully-issued writ. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 305 (Chk. 1998).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM Intrm. 312, 314 n.1 (Chk. 1998).

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM Intrm. 496, 497 (Chk. S. Ct. Tr. 1999).

The only purpose of statutes authorizing orders in aid of judgment is to force the payment of a judgment and to provide means to collect a money judgment, which is the same as proceedings for attachment, garnishment or execution. Kama v. Chuuk, 9 FSM Intrm. 496, 498 (Chk. S. Ct. Tr. 1999).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM Intrm. 496, 498 (Chk. S. Ct. Tr. 1999).

Historically, orders in aid of judgment and orders in aid of execution serve the same purpose and the terms are used interchangeably. Their purpose is to provide a means of discovery to inquire into the assets and ability of a judgment debtor to pay a judgment. Kama v. Chuuk, 9 FSM Intrm. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as

attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM Intrm. 496, 498 (Chk. S. Ct. Tr. 1999).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM Intrm. 312, 316 (Chk. 2001).

Although under FSM law once an application for an order in aid of judgment has been filed no writ of execution may issue except under an order in aid of judgment or by special order of the court, it is uncertain what effect, if any, this (or the Chuuk state law prohibiting attachment, execution, or garnishment of Chuuk public property) would have on courts in jurisdictions outside the Federated States of Micronesia. Walter v. Chuuk, 10 FSM Intrm. 312, 317 (Chk. 2001).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM Intrm. 371, 386 (Pon. 2001).

In the usual case, a full supersedeas bond is required in order to stay execution of a judgment. The bond's amount is calculated to include the judgment's whole amount, costs on appeal, interest, and damages for delay. Courts in the exercise of their discretion have permitted a form of security other than a bond so long as that security is adequate and the judgment creditor's recovery is not at risk. Amayo v. MJ Co., 10 FSM Intrm. 427, 429 (Pon. 2001).

In the absence of a supersedeas bond, a judgment creditor generally has, within specified statutory limits, a right to a writ of execution upon entry of judgment. Amayo v. MJ Co., 10 FSM Intrm. 433, 434 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002).

When the appellant has yet to offer a supersedeas bond, and the court has yet to approve the bond, the stay has yet to become effective. Until such time as the appellant offers a supersedeas bond acceptable to the court, there is no stay in effect, and the plaintiff is free to execute on the judgment. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

When a bank's chattel mortgage purchase money liens are not enforceable against third parties who have had no notice of them and are therefore not enforceable against and do not have priority over an execution lien, even if the bank were permitted to intervene, it could not prevail. Since that is so, the bank does not have an interest in the litigation that would be impaired if it were not allowed to intervene and therefore does not satisfy the elements required to intervene of right. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 365-66 (Chk. 2003).

A judgment holder is entitled to a writ of execution. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 366 (Chk. 2003).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 378 (App. 2003).

The current practice that where a judgment creditor who holds a national court judgment wants national police officers to execute on the judgment, he must bear the transportation and per diem costs of bringing national police personnel to Yap to execute on the writ since Yap has no resident national law enforcement officer. While this involves substantial up-front costs to the judgment creditor, those costs are recoverable from the judgment debtor under 6 F.S.M.C. 1408. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453 (Yap 2003).

The court is reluctant to opine on 6 F.S.M.C. 1408's constitutionality when the judgment creditor has an enforcement remedy, if not an ideal one, notwithstanding any constitutional adjudication which this court might render on the division of powers issue that Yap raised regarding a writ of execution directed to the Yap chief of police. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453 (Yap 2003).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453 (Yap 2003).

When the judgment creditor has made the necessary arrangements through the FSM Department of Justice to bring national police officers to Yap, he should so advise the court which will then issue the writ of execution designating the appropriate individuals. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453-54 (Yap 2003).

Among judgment creditors, those with a writ of execution have priority over those who do not. In re Engichy, 11 FSM Intrm. 520, 527 (Chk. 2003).

One reason writ-holders are granted a higher priority is that the judgment creditor who has taken the effort and exhibited the diligence to move to the status of execution creditor deserves to be treated differently on that basis. In re Engichy, 11 FSM Intrm. 520, 527 (Chk. 2003).

A judgment-creditor's right to the issuance of a writ of execution is provided for by statute, as is the right to obtain an order in aid of judgment. In re Engichy, 11 FSM Intrm. 520, 527 (Chk. 2003).

By statute, a party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution. In re Engichy, 11 FSM Intrm. 520, 527 (Chk. 2003).

The court's procedural rules stay a writ of execution's issuance until ten days after entry of judgment. The purpose behind this automatic ten-day stay is to permit a judgment-debtor to determine what course of action to follow. In re Engichy, 11 FSM Intrm. 520, 527 (Chk. 2003).

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

An FSM judgment-debtor can, if he so chooses, prevent the issuance of a writ of execution because any party, either the judgment-creditor or the judgment-debtor may apply for an order in aid of judgment and once a party has applied for an order in aid of judgment, the judgment-creditor is statutorily barred from obtaining a writ of execution except as part of an order in aid of judgment or by special order of the court for cause shown. In re Engichy, 11 FSM Intrm. 520, 528 (Chk. 2003).

A judgment-creditor who has obtained an order in aid of judgment should be accorded the same status

as a judgment creditor who has obtained a writ of execution because both methods of enforcing a money judgment are provided for by statute and both methods show that the judgment creditor has taken the effort and exhibited diligence greater than that of a mere judgment-creditor. In re Engichy, 11 FSM Intrm. 520, 528 (Chk. 2003).

A judgment-creditor's statutory right to obtain immediate issuance of a writ of execution implies as well a legislative intent that holders of writs be paid on the basis of a first-in-time, first-in-right rule according to the dates of each party's writ. In re Engichy, 11 FSM Intrm. 520, 528 (Chk. 2003).

Judgment-creditors with execution creditor status are to be paid on the basis of a first-in-time, first-in-right rule according to the dates of the individual parties' writs. The pro rata payment basis is the rule for unsecured judgment-creditors who do not hold execution creditor status or a statutory lien priority. Because holders of orders in aid of judgment are accorded the status of execution creditors, those judgment-creditors will be paid in order according to the date of either their first writ of execution or their first order in aid of judgment. In re Engichy, 11 FSM Intrm. 520, 528-29 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

Any judgment-creditor with a writ of execution may elect not to use it, and try some other method to satisfy its judgment. In re Engichy, 11 FSM Intrm. 520, 532 (Chk. 2003).

An execution sale does not require judicial confirmation or allow claims of other creditors. In re Engichy, 11 FSM Intrm. 520, 532 (Chk. 2003).

An execution creditor who has levied on its writ may, with the debtors' consent, postpone the execution sale. In re Engichy, 11 FSM Intrm. 520, 532 (Chk. 2003).

Courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. This statutory prohibition has been held to prohibit the issuance of an order in aid of judgment against Chuuk. Ben v. Chuuk, 11 FSM Intrm. 649, 651 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM Intrm. 649, 651 (Chk. S. Ct. Tr. 2003).

Any party recovering a civil judgment for money is entitled to a prompt, immediate issuance of a writ of execution anytime after ten days after the entry of judgment, and a writ of execution, if levied upon, requires immediate payment of the judgment in full. In re Engichy, 12 FSM Intrm. 58, 66 (Chk. 2003).

An order in aid of judgment, unlike a writ of execution, may only be obtained after application and notice to the other party and a hearing instead of the prompt issuance possible for a writ of execution. In re Engichy, 12 FSM Intrm. 58, 66 (Chk. 2003).

A judgment-creditor (or its attorney) must evaluate which method (writ of execution or order in aid of judgment) is most likely to best satisfy its judgment unless the judgment-debtor has already foreclosed that choice by applying for an order in aid of judgment. In re Engichy, 12 FSM Intrm. 58, 66-67 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs

to the extent that it is applicable. Barrett v. Chuuk, 12 FSM Intrm. 558, 560 (Chk. 2004).

— Garnishment

Although there is no provision for garnishment in Pohnpei state law nor any national statute explicitly providing for garnishment, garnishment of wages is an acceptable means for enforcing an unpaid judgment, pursuant to the FSM Supreme Court's statutory "general powers," its power to enforce judgments in any manner common in courts in the United States, and its power to issue writs of attachment. Bank of Guam v. Elwise, 4 FSM Intrm. 150, 152 (Pon. 1989).

Although technically attachment and garnishment are distinct processes, attachment applying to assets in the defendant's possession and garnishment involving assets in the possession of a third party, the statutory language regarding attachment would seem to apply to both cases. Bank of Guam v. Elwise, 4 FSM Intrm. 150, 152 (Pon. 1989).

The requirements and procedures for issuing a writ of garnishment should be the same as those applied to attachment proceedings. Bank of Guam v. Elwise, 4 FSM Intrm. 150, 152 (Pon. 1989).

The FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. Bank of Guam v. Elwise, 4 FSM Intrm. 150, 152 (Pon. 1989).

Where garnishment is warranted, then anything beyond what is reasonably necessary for the defendant to support himself and his dependents can be garnished. Bank of Guam v. Elwise, 4 FSM Intrm. 150, 153 (Pon. 1989).

Absent specific legislative authority the Chuuk State Judiciary Act properly bars the state court from attaching, executing, or garnishment of public property. Billimon v. Chuuk, 5 FSM Intrm. 130, 136 (Chk. S. Ct. Tr. 1991).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. Louis v. Kutta, 8 FSM Intrm. 312, 314 n.1 (Chk. 1998).

Garnishment exists as a remedy available in the FSM to a judgment creditor. Louis v. Kutta, 8 FSM Intrm. 312, 319 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial action. Louis v. Kutta, 8 FSM Intrm. 312, 321 (Chk. 1998).

Hypothetical administrative difficulties do not justify holding that garnishment does not apply to the national government. Louis v. Kutta, 8 FSM Intrm. 312, 321 (Chk. 1998).

FSM Civil Rule 69 expressly authorizes the court to issue process other than a writ of execution in the course of enforcing a judgment. Louis v. Kutta, 8 FSM Intrm. 312, 322 (Chk. 1998).

The provision that money judgments against the FSM shall be paid from funds appropriated by Congress is not implicated when the FSM is a mere garnishee because garnishment is directed toward the property of the judgment debtor held by the FSM, not toward property of the FSM itself. Louis v. Kutta, 8 FSM Intrm. 312, 322 (Chk. 1998).

It is unlikely that in paying the judgment an appellant would waive its appeal, so long as payment was made under protest. In holding that the right to appeal was not precluded by payment, the courts have sometimes noted that payment had been made under protest; conversely, in holding that the right to appeal

was barred by payment, the courts have sometimes noted that payment had not been made under protest. Louis v. Kutta, 8 FSM Intrm. 460, 461 (Chk. 1998).

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

Chuuk state courts have the power to issue all writs for equitable and legal relief, except the power of attachment, execution and garnishment of public property. Kama v. Chuuk, 9 FSM Intrm. 496, 497 (Chk. S. Ct. Tr. 1999).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. Amayo v. MJ Co., 10 FSM Intrm. 371, 386 (Pon. 2001).

A writ of garnishment is the equivalent of a writ of execution in terms of the end sought, which is satisfaction of the judgment. Amayo v. MJ Co., 10 FSM Intrm. 433, 435 (Pon. 2001).

In the event that judgment creditors wish to execute on any bank accounts or other debts owed to the judgment debtor, they should present the court with a form of writ of garnishment directed to the garnishee debt-holder, which will specify that 1) upon receipt of the writ, the garnishee will freeze payment of all accounts, debts, or other money owed to the judgment debtor pending further order of court; and 2) that within three days of the writ's service, the garnishee will file with the court a response showing what debts it owes to the judgment debtor. Upon review of the response, the court will then issue a turnover order if appropriate, after determining any competing claims that the garnishee may have to those accounts. Amayo v. MJ Co., 10 FSM Intrm. 433, 435-36 (Pon. 2001).

Section 4 of the Chuuk Judiciary Act of 1990 denies courts the power of attachment, execution and garnishment of public property. Thus, a court may issue an order in aid of judgment addressed to the state, but is barred from issuing any order in aid of judgment that acts as an attachment, execution and garnishment of public property. Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 377 (App. 2003).

Both execution and attachment are legal processes carried out by writ. Likewise, garnishment is carried out by writ. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 378 (App. 2003).

By statute, the national government is not subject to writ of garnishment or other judicial process to apply funds or other assets owed by it to a state to satisfy a state's obligation to a third person. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 540-41 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541 (Chk. 2003).

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

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

When the drawdown amounts that Chuuk receives from the FSM national government are greater by more than an order of magnitude than the judgment amount remaining and when, looking to the case's more than six and a half year post-judgment history, the anti-garnishment statute deprives the judgment creditor of the only reasonably expeditious means of obtaining satisfaction of her judgment. Thus the fastest manner in which the debtor can reasonably pay the judgment under 6 F.S.M.C. 1409 is by an order of garnishment directed to the national government. Davis v. Kutta, 11 FSM Intrm. 545, 549 (Chk. 2003).

The trial court has jurisdiction to entertain the motions to stay enforcement of the writs of garnishment. Ordinarily the applicant must first seek a stay from the court appealed from; if the court denies the motion, the applicant may then seek a stay from the appellate division. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 7 (Pon. 2003).

When writs of garnishment that formally designated the FSM as a "garnishee/defendant" were entered before the notices of appeal, the FSM was already a party and its motion to intervene is therefore moot. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 8 (Chk. 2003).

The finding of unconstitutionality of 6 F.S.M.C. 707 (the anti-garnishment statute) applies only to the facts of cases which involve judgments based on violation of constitutional rights guaranteed under the FSM Constitution's Declaration of Rights, and for which a cause of action is expressly conferred by national civil rights statute. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 9 (Chk. 2003).

A garnishment order directs the garnishee, which is the person or entity holding money for the benefit of the judgment creditor, to pay sufficient money to the judgment creditor to discharge the judgment. Before this can occur, the garnishee must determine if and how much money it holds for the judgment debtor, and then pay the judgment amount. This will involve administrative steps by the garnishee. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 10 (Chk. 2003).

In a garnishment matter, a significant administrative burden would be offset by the substantially greater weight of the fundamental human rights guaranteed by the FSM's Constitution's Declaration of Rights. In such a case, a mere administrative burden may not be interposed as an obstacle to the vindication of those rights. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 10 (Chk. 2003).

A garnishment order will not circumvent any state plan to pay judgments when there has been no plan although legislation had required that one be developed. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 10 (Chk. 2003).

When writs of garnishment are left in place which require the FSM to pay the judgments and attorney's fees awards, the FSM may pay the judgments under protest and still preserve its grounds for appeal. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 12 (Chk. 2003).

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

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

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any . . . manner known to American common law or common in courts in the United States." FSM Social Sec. Admin. v. Lelu Town, 13 FSM Intrm. 60, 61 (Kos. 2004).

At common law, garnishment did not exist as a remedy where the judgment debtor was a municipality because it is generally held that the funds or credits of a municipality or other public body exercising governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by garnishment served upon the debtor or depository of the municipality. FSM Social Sec. Admin. v. Lelu Town, 13 FSM Intrm. 60, 62 (Kos. 2004).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government where the underlying cause of action is based on a violation of the national civil rights statute. The rationale for those writs was the Supremacy Article of the FSM Constitution, which must control regardless of a state constitutional provision, or national law, to the contrary. It has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. FSM Social Sec. Admin. v. Lelu Town, 13 FSM Intrm. 60, 62 (Kos. 2004).

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment directed toward the assets of a municipality will be denied. FSM Social Sec. Admin. v. Lelu Town, 13 FSM Intrm. 60, 62 (Kos. 2004).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM Intrm. 178, 186 (App. 2005).

ATTORNEY, TRIAL COUNSELOR AND CLIENT

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 Intrm. 21, 26 (App. 1985).

The purpose of Rule 4.2 of the Model Rules of Professional Conduct as it applies to organizations is not to pull a veil of partial confidentiality around facts, or even people who have knowledge of the matter in litigation by virtue of their close relationship with a party, but to protect against intrusions by other attorneys upon an existing attorney-client relationship. Panuelo v. Pohnpei (II), 2 FSM Intrm. 225, 232 (Pon. 1986).

The prohibition in Rule 4.2 of the Model Rules of Professional Conduct against communications with a client organization represented by another attorney applies only to communications with an individual whose interests at the time of the proposed communication are so linked and aligned with the organization that one may be considered the alter ego of the other concerning the matter in representation. Panuelo v. Pohnpei (II), 2 FSM Intrm. 225, 232 (Pon. 1986).

The comment to Rule 4.2 of the Model Rules of Professional Conduct was written with the understanding or assumption that it could only affect people who, at the time of the proposed communication, have a working relationship with the organization. Panuelo v. Pohnpei (II), 2 FSM Intrm. 225, 233 (Pon. 1986).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the

administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM Intrm. 416, 427 (Pon. 1988).

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM Intrm. 556, 561-63 (Truk S. Ct. App. 1988).

Truk State Bar Rule 13(a), which adopts the Code of Professional Responsibility, prevents conflicts of interest and appearances of impropriety by requiring that members of the state bar conduct themselves in a manner consistent with the American Bar Association's Code of Professional Responsibility. Nakayama v. Truk, 3 FSM Intrm. 565, 570 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM Intrm. 565, 572 (Truk S. Ct. Tr. 1987).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM Intrm. 17, 30 (App. 1989).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 67 (Pon. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 334-35 (Pon. 1994).

While it may be unethical for an attorney to testify at a trial in which he is an advocate, no actual conflict exists when the attorney has not yet been called to testify and case may be resolved without a trial. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 385, 386 (Pon. 1996).

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

The Chuuk Attorney General has no duty to act a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM Intrm. 41, 41-42 (Chk. S. Ct. Tr. 1999).

Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 170 n.3 (App. 1999).

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

A court cannot unilaterally relieve an attorney of his obligations to his clients. It is initially the attorney's responsibility, in consultation with his clients, to determine where his obligations and duties lie and if they will be satisfied by not participating in an appeal, and proceed accordingly. In re Sanction of Woodruff, 9 FSM Intrm. 414, 415 (App. 2000).

Counsel must act with reasonable diligence and promptness in representing a client. Reasonable diligence requires follow up by legal counsel to determine whether any documents have been served upon him at his office. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 193 (Kos. S. Ct. Tr. 2001).

A lawyer must keep a client reasonably informed about the status of a matter. The failure of the counsel of record to inform his clients of an order striking their punitive damages count if new counsel did not file an appearance by March 30, 2001, would appear not to discharge that duty. Elymore v. Walter, 10 FSM Intrm. 267, 268 (Pon. 2001).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 342, 344 (Chk. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM Intrm. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM Intrm. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM Intrm. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM Intrm. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM Intrm. 371, 382 (Pon. 2001).

The phrase "the endless stream of discovery drivel emanating from plaintiffs' quarter" in a written response has no place in the civil colloquy (especially in the course of written discourse which permits the authoring party time to reflect) within the bounds of which professional, zealous advocacy takes place. Such comments are no substitute for convincing arguments that follow from the careful marshaling of facts, and the application to those facts of carefully researched principles of law. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 473-74 (Pon. 2001).

Normally, a quasi-governmental agency would be represented by private counsel not associated with the agency. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 239 n.2 (Chk. S. Ct. Tr. 2002).

While counsel may be engaged for only limited purposes, it is expected that the court and the other parties would be so informed on the record at the representation's start. If the court has not been so informed, the court and the other parties, must presume that counsel is the counsel of record for all purposes whatsoever. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

Trial counsel may have a duty to take steps to protect a client's appeal rights even though trial counsel may not be obligated or intended to be appellate counsel. Goya v. Ramp, 13 FSM Intrm. 100, 106 (App. 2005).

– Admission to Practice

The normal Trust Territory High Court authorization to practice before it is unlimited as to time and covers the entire Trust Territory. Limited or provisional Trust Territory High Court authorization to practice law is not sufficient High Court "certification" to qualify an applicant for admission to practice under Rule I(A) of the FSM Supreme Court's Rules for Admission. In re Robert, 1 FSM Intrm. 4, 4-5 (Pon. 1981).

The grandfather clause of Rule I of the FSM Supreme Court's Rules for Admission permits licensed or existing practitioners before the Trust Territory courts to continue in their same capacity by shielding them from the necessity of complying with the new licensing standards. In re Robert, 1 FSM Intrm. 4, 7 (Pon. 1981).

In seeking authorization to practice before the FSM Supreme Court, if the High Court's authorization of the applicant to practice before it is not an unreserved certification the applicant does not fulfill the requirements under the FSM Supreme Court's Rule for Admission I(A), and must fulfill the conditions required of new applicants. In re Robert, 1 FSM Intrm. 4, 11-13 (Pon. 1981).

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

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

Admission to appear for a particular case, pursuant to Rule 4(A) of the Rules for Admission to Practice, is liberally granted. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM 440, 443 (Truk 1988).

Where an attorney seeks to have another attorney disqualified on the grounds that such other attorney was not admitted to the state bar, and the attorney seeking the disqualification should have known that the other attorney was within an exception to that rule, the motion to disqualify is without merit and shall be denied. Nakayama v. Truk, 3 FSM Intrm. 565, 568-69 (Truk S. Ct. Tr. 1987).

In a nation constitutionally committed to attempt to provide legal services for its citizens, the mere fact that an attorney had previously sued the state, without any suggestion that actions taken were frivolous, vexatious, or for purposes of harassment, cannot be viewed as reasonable grounds for denying the attorney

the opportunity to practice law in that state. Carlos v. FSM, 4 FSM Intrm. 17, 24 (App. 1989).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM Intrm. 17, 27 (App. 1989).

The decision whether to permit an attorney, not licensed within the FSM, to practice before the FSM Supreme Court, in a particular case falls within the sound discretion of the trial judge. In re Chikamoto, 4 FSM Intrm. 245, 248 (Pon. 1990).

FSM Admission Rule IV(A) does not provide a means for a nonresident attorney, who has not been licensed to practice before the court and who has no reasonable prospect of being licensed in the near future, nonetheless to be permitted to practice before the court on a continuing basis. In re Chikamoto, 4 FSM Intrm. 245, 249 (Pon. 1990).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

FSM Admission Rule III presumes that an arrangement of reciprocity must already exist between the FSM Court and another jurisdiction, in order for the rule to apply. When no such arrangement exists, it must first be created before Rule III can be applied. In re McCaffrey, 6 FSM Intrm. 20, 21 (Pon. 1993).

The fact that the Pohnpei Supreme Court admits attorneys of the FSM Bar does not alone create a formal arrangement of reciprocity. The arrangement must be formal, neither implied nor constructive. In re McCaffrey, 6 FSM Intrm. 20, 22 (Pon. 1993).

The language of FSM Admission Rule III contemplates that formal arrangements between the FSM Supreme Court and other jurisdictions must exist before an attorney from another jurisdiction may apply for admission to the FSM Supreme Court on the basis of reciprocity. McCaffrey v. FSM Supreme Court, 6 FSM Intrm. 279, 281-82 (App. 1993).

FSM Admission Rule III is directed at attorneys residing outside of the FSM in other Pacific jurisdictions. McCaffrey v. FSM Supreme Court, 6 FSM Intrm. 279, 282 (App. 1993).

Motions to appear are not granted as a matter of course and each application must be carefully reviewed for compliance with the Rules of Admission. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM Intrm. 464, 466 (Pon. 1994).

The FSM Supreme Court's Chief Justice's constitutional powers to make rules governing the attorney discipline and admission to practice is limited to the national courts. He is not authorized to govern admission to practice in state courts. Berman v. Santos, 7 FSM Intrm. 231, 236 (Pon. 1995).

The FSM Supreme Court and the state courts may each admit and discipline attorneys to appear before their respective courts. Berman v. Santos, 7 FSM Intrm. 231, 237-38 (Pon. 1995).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM Intrm. 231, 240 (Pon. 1995).

The power to make rules governing the admission of attorneys to practice in state courts is a state power, not a power of the FSM Supreme Court Chief Justice. Berman v. Santos, 7 FSM Intrm. 624, 626 (App. 1996).

Once an attorney has started private practice she must submit a $25 fee to the Pohnpei Supreme Court

in order to be admitted there even if she was exempt from that requirement before as a government attorney. Berman v. Santos, 7 FSM Intrm. 624, 627 (App. 1996).

A motion to appear pro hac vice requires a Rule II(B) certification as to the morals and character of the applying attorney. In re Certification of Belgrove, 8 FSM Intrm. 74, 77 (App. 1997).

The FSM Supreme Court has the discretion to properly raise the issue of the fitness and character of an applicant for admission to the FSM bar even when the rule's requirements have been met by the applicant's actions because the court may require, in addition to the applicant's certificate, other proof of good character. In re Certification of Belgrove, 8 FSM Intrm. 74, 77 (App. 1997).

When there are pending criminal or professional responsibilities charges against an applicant to the FSM bar the FSM Supreme Court normally has the necessary discretion to investigate and reach a conclusion concerning the applicant's character and fitness. That discretion may be abused by an unexplained, lengthy delay. Failure to exercise the discretion within a reasonable time is an abuse of the discretion. In re Certification of Belgrove, 8 FSM Intrm. 74, 77-78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM Intrm. 74, 78 (App. 1997).

Admission to appear pro hac vice may be granted conditioned upon counsel's later providing to the court certificates of good standing in the jurisdictions where she is permitted to practice. Kosrae v. Worswick, 9 FSM Intrm. 536, 538 (Kos. 2000).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM Intrm. 520, 521-22 (Pon. 2002).

When trial counselors seek to appear in the FSM Supreme Court without supervision, the court will, in addition to any relevant criteria specified in Rule IV.A., consider the availability to the trial counselor of an attorney for consultation; the client's wishes and whether the trial counselor had prior professional association with the client; the litigation's complexity and the importance of the issues to the FSM; the trial counselor's previously demonstrated competence and other factors indicating whether granting the motion would be in the interests of justice. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM Intrm. 520, 522 (Pon. 2002).

When the issues involved in the litigation are complex, and are important to the people of Micronesia and of Pohnpei and when the trial counselor has had a prior professional association with the client, but had been required to appear with supervision in previous FSM Supreme Court cases in which he represented the client, and when there are several private attorneys in Pohnpei who are admitted to practice before the court, the trial counselor will be admitted to appear in the case only after he has submitted a written motion and a written agreement, signed by an attorney admitted to practice before the FSM Supreme Court, stating that the attorney will supervise him. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM Intrm. 520, 522 (Pon. 2002).

A person seeking to appear *pro hac vice* in a case, but who is not licensed to practice law, nor admitted as a trial counselor in Chuuk or in any other jurisdiction is therefore moving to permit "third-party lay representation" in the case. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 156 (Chk. S. Ct. Tr. 2003).

The Chuuk State Supreme Court follows the general rule that in order to obtain permission to appear

for a particular case (*pro hac vice*), in a jurisdiction where the applicant is not admitted to practice, the applicant must be properly admitted to practice law in another jurisdiction. The only exceptions to this rule are when a party represents him or he self, *pro se*, or where a husband or wife appears on behalf of either or both when one or the other are parties to a lawsuit, pursuant to the custom that a spouse may represent the other spouse in matters involving either or both of them. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 156-57 (Chk. S. Ct. Tr. 2003).

While it might perhaps be better if the rule that admission *pro hac vice* requires admission in another jurisdiction could be relaxed or waived in some cases, the potential injury to the client, should the applicant fail to discharge his duties as an attorney properly, clearly outweigh the benefits of permitting him to act as an attorney without having the requisite credentials. For these reasons a motion for admission *pro hac vice* will be denied. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 157 (Chk. S. Ct. Tr. 2003).

Any attorney who assists parties in a case must be one admitted to practice before the national court. Without the court's prior authorization, attorneys or individuals who are not admitted to the national court are expressly prohibited from taking any part in any matter filed in the national court. Damerlane v. Sato Repair Shop, 12 FSM Intrm. 231, 233 (Pon. 2003).

All persons admitted to practice law in Kosrae must comply with the Model Rules of Professional Conduct as adopted by the American Bar Association in August 1983 as amended through 1995. The word "lawyer" as it appears in the Model Rules is deemed to refer to attorneys and trial counselors practicing law in the state. George v. Nena, 12 FSM Intrm. 310, 318 n.5 (App. 2004).

– Appearance

An attorney, who stated that he was appearing temporarily for a party and only for the purposes of that one brief, in chambers, off-the-record status conference and who did not file a notice of appearance either then or subsequently, did not appear of record. And when that attorney did nothing officially of record in the case until he came to court with the party for the trial's afternoon session, he was not the party's counsel of record as of the date the notice of trial was served, and it is immaterial whether he received the notice of trial. Amayo v. MJ Co., 10 FSM Intrm. 371, 378-79 (Pon. 2001).

When a court allows an attorney's limited appearance, it is not clear whether litigants represented in a limited manner understand that their attorney is not taking full responsibility for prosecuting or defending them. Thus trial judges should consider carefully, on a case-by-case basis, whether to allow "limited appearances." As a general rule, attorneys should either enter formal appearances and accept full responsibility for a case, or not be permitted to appear before the court. Panuelo v. Amayo, 12 FSM Intrm. 365, 373 (App. 2004).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM Intrm. 365, 373-74 (App. 2004).

– Attorney Discipline and Sanctions

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM Intrm. 18, 20 (Pon. 1981).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or where the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM Intrm. 255, 261 (Pon. 1983).

In a new nation in which the courts have not yet established a comprehensive jurisprudence, where an

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

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM Intrm. 17, 27 (App. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM Intrm. 145, 150 (Yap 1989).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM Intrm. 29, 30 (Pon. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed, nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM Intrm. 114, 117 (App. 1991).

Where the information desired from another party's lawyer as a witness was material and necessary and unobtainable elsewhere and the party desiring it had not acted in bad faith in the late service of a subpoena, a motion for sanctions may be denied at the court's discretion. In re Island Hardware, Inc., 5 FSM Intrm. 170, 174-75 (App. 1991).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM Intrm. 26, 27 (App. 1993).

Dismissal of actions for attorney misconduct is generally disfavored in light of the judicial preference for adjudication on the merits whenever possible so as to allow parties a reasonable opportunity to present their claims and defenses. Paul v. Hedson, 6 FSM Intrm. 146, 147 (Pon. 1993).

The court may sanction an attorney by its inherent authority to enforce compliance with procedural rules whenever it is apparent that the attorney has failed to abide by such rules without good cause. Paul v. Hedson, 6 FSM Intrm. 146, 148 (Pon. 1993).

An attorney who fails to make timely requests for enlargement of time to complete discovery beyond the deadline set by court order; who has someone other than the client sign answers to interrogatories; and who fails to serve the answers properly on opposing counsel while filing a proof of service with the court is sanctionable on the court's own motion. Paul v. Hedson, 6 FSM Intrm. 146, 148 (Pon. 1993).

In light of the court's policy for adjudicating matters on the merits the court may sanction counsel for initial noncompliance with the procedural rules rather than dismissing his client's case. Nakamura v. Bank of Guam (I), 6 FSM Intrm. 224, 229 (App. 1993).

A member of the FSM Bar may be suspended or disbarred if that individual has been suspended or disbarred by any other court. When an attorney has been suspended or disbarred in another jurisdiction and has not shown cause why he is not unfit to practice law in the FSM, he will be disbarred in the FSM. In re Webster, 7 FSM Intrm. 201, 201 (App. 1995).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM Intrm. 231, 241 (Pon. 1995).

An attorney who takes a fee for representation and fails to provide any services to his client and whose client has to sue him for the return of the fee has violated the bar's ethical rules and his oath, and no longer has the good moral character required of a member of the Chuuk State Bar and will be suspended from the practice of law. In re Suspension of Chipen, 7 FSM Intrm. 268, 268-69 (Chk. S. Ct. Tr. 1995).

An attorney may be sanctioned when that attorney's use of two different addresses and his failure to monitor both addresses for service of papers causes delay. FSM Telecomm. Corp. v. Worswick, 7 FSM Intrm. 420, 422 (Yap 1996).

A lawyer has an ethical obligation to disclose legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to her client's position. Iriarte v. Etscheit, 8 FSM Intrm. 231, 237 (App. 1998).

When counsel has not been specifically advised that the court is considering the issuance of personal sanctions against him and he was not specifically given notice of a hearing on the court's motion to sanction him, the sanction will be vacated and a hearing scheduled to provide the counsel an opportunity to be heard on every matter relevant to the court's resolution of the issue. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM Intrm. 150, 153 (Pon. 1999).

A disbarment proceeding is adversarial and quasi-criminal in nature and the moving party bears the burden of proving all elements of a violation. The same is true when an attorney disciplinary proceeding results in a lesser sanction. Any disciplinary proceeding has the potential to end in disbarment or suspension. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 171 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 171 (App. 1999).

The FSM Disciplinary Rules do not encourage settlement or compromise between disciplinary counsel and the respondent attorney. Settlements between a complainant and the respondent attorney do not, in themselves, justify abatement of the disciplinary proceeding. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 171 (App. 1999).

The reviewing justice has every right to reject a sanction proposed by the disciplinary counsel and respondent attorney. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

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

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was

held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 174 (App. 1999).

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

Appellate counsel will not be sanctioned when they were not the party's counsel before the trial division or in previous appellate procedures and once they became counsel acted expeditiously to comply with the rules. Chuuk v. Secretary of Finance, 9 FSM Intrm. 255, 257 (App. 1999).

When the pleadings, the documents submitted as evidence during the hearing, the responding attorney's signed affidavit which clearly and unequivocally states that he admits to a violation of Rule 1.16(d) and to a violation of Rule 1.7(a), and his statements during the hearing, constitute clear and convincing evidence establishing that violations of the Model Rules occurred, the court may find that the attorney violated Rules 1.7 and 1.16 of the Model Rules. In re Robert, 9 FSM Intrm. 278a, 278g (Pon. 1999).

Suspensions may run concurrently, beginning 30 days from the date that the Clerk of Court enters the order. In re Robert, 9 FSM Intrm. 278a, 278g (Pon. 1999).

In the event that a suspended attorney is reinstated under Rule 13 of the Disciplinary Rules, his future practice of law may be supervised for some time. In re Robert, 9 FSM Intrm. 278a, 278g (Pon. 1999).

A suspended attorney may be assessed the costs, excluding salaries, but including airfare, per diem, and car rentals, that were incurred in connection with the prosecution of his disciplinary matter.. In re Robert, 9 FSM Intrm. 278a, 278h (Pon. 1999).

A suspended attorney is required to abide by the provisions of the Disciplinary Rules during his suspension, including Rule 12, which governs disbarred or suspended attorneys. In re Robert, 9 FSM Intrm. 278a, 278h (Pon. 1999).

An attorney can be sanctioned in his individual capacity for willfully violating a valid court order, for causing the needless consumption of substantial amounts of the court's time and resources and for otherwise engaging in conduct abusive of the judicial process. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM Intrm. 316, 327 (Pon. 2000).

When Rule 37 sanctions have proven futile in resolving a discovery dispute and because they do not provide a remedy for the waste of a court's time and resources, a court may invoke its inherent power to control the orderly and expeditious disposition of cases and proper compliance with its lawful mandates. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM Intrm. 316, 329 (Pon. 2000).

When a court has issued no sanction in response to a discovery motion and sanctions of attorney's fees and costs in response to a second motion and when a third motion reveals that the attorney's behavior was then at the root of the problem to be corrected, an attorney's knowing and deliberate violation of a valid court order may result in personal monetary sanctions against him because while the court is cautious of exercising its inherent powers to issue personal monetary sanctions against an attorney, it cannot and will not tolerate continued discovery abuse. Pohnpei v. M/V Miyo Maru No. 11, 9 FSM Intrm. 316, 331-32 (Pon. 2000).

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

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal

contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM Intrm. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM Intrm. 79, 85 (App. 2001).

Sanctions imposed personally on an attorney must be based on that attorney's personal actions or omissions, not on the court's frustration, no matter how justified, with previous counsel's actions or omissions, or with a recalcitrant client's actions or omissions that are beyond an attorney's control or influence. In re Sanction of Woodruff, 10 FSM Intrm. 79, 87 (App. 2001).

No proper personal sanction against an attorney should include any consideration of the amount of time and work the court spent on earlier motions when the attorney was not responsible for or personally involved with the case at the time the court's work was done. In re Sanction of Woodruff, 10 FSM Intrm. 79, 87 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM Intrm. 79, 88 (App. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM Intrm. 391, 395 (Pon. 2001).

The fact that a Professional Conduct Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek the Rule's enforcement. Nix v. Etscheit, 10 FSM Intrm. 391, 395 (Pon. 2001).

Kosrae Civil Procedure Rule 11 provides that for a wilful violation of that rule an attorney or trial counselor may be subjected to appropriate disciplinary action. In re Bickett, 11 FSM Intrm. 124, 125 (Kos. S. Ct. Tr. 2002).

Kosrae practitioners may be disciplined by the Kosrae Chief Justice after notice and hearing. In re Bickett, 11 FSM Intrm. 124, 125 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to attorneys and trial counselors practicing before the Kosrae State Court. In re Bickett, 11 FSM Intrm. 124, 126 (Kos. S. Ct. Tr. 2002).

A complaint that alleges violations of Model Rules 3.1, 5.1, and 8.4, taken together, are sufficient to allege a Civil Rule 11 violation. In re Bickett, 11 FSM Intrm. 124, 126 (Kos. S. Ct. Tr. 2002).

A finding of subjective bad faith on the part of the attorney filing the pleading is required in order to impose sanctions under Kosrae's Civil Rule 11. In re Bickett, 11 FSM Intrm. 124, 127 (Kos. S. Ct. Tr. 2002).

A complaint for declaratory judgment was not filed in subjective bad faith and thus did not violate Kosrae Civil Rule 11 when, although the claim did not survive a motion to dismiss, it was colorable, and the fact that the court later found that the dispute in question was not justiciable as a matter of law did not change that. Not every colorable claim will succeed, and the benefit of hindsight may not serve to bootstrap a Rule 11 violation. In re Bickett, 11 FSM Intrm. 124, 128 (Kos. S. Ct. Tr. 2002).

When the court cannot conclude that the complaint for declaratory judgment constituted a claim not simply lacking in merit, but bordering on frivolity and when the court is not persuaded that there is clear

evidence that the declaratory judgment claim was entirely without color and made for reasons of harassment or delay or for other improper purposes, the case was a colorable claim, supported by some authority. Thus Kosrae Civil Rule 11 was not violated when the complaint for declaratory judgment was filed. In re Bickett, 11 FSM Intrm. 124, 129 (Kos. S. Ct. Tr. 2002).

No authority leads to the conclusion that various procedural defects in the pleadings in themselves constitute sanctionable conduct, and the court finds such contentions to be without merit. In re Bickett, 11 FSM Intrm. 124, 129 (Kos. S. Ct. Tr. 2002).

The Model Rules of Professional Conduct are applicable to practitioners before the FSM Supreme Court. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 230 (Pon. 2002).

A lawyer must not knowingly make a false statement of material fact or law to a tribunal. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 230 (Pon. 2002).

Model Rule 1.2 prohibits a lawyer from perpetrating a fraud upon the court. If a party's attorney pursues a spurious lack of relevancy claim on the party's behalf with the specific intent to prevent the disclosure of evidence damaging to the party, then Rule 1.2 is implicated. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 230 (Pon. 2002).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

A proper sanction is to admonish an attorney in the strongest terms for his failure, as counsel of record, to appear at a scheduled hearing. Further such inattentiveness and lack of diligence may require the attorney's referral to the attorney disciplinary process. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

The practice of attorneys or trial counselors "ghost drafting" legal documents should, wherever possible, be strongly discouraged. In re Suda, 11 FSM Intrm. 564, 566 n.1 (Chk. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct apply to all attorneys and trial counselors. Ittu v. Palsis, 11 FSM Intrm. 597, 598 (Kos. S. Ct. Tr. 2003).

The Model Rules of Professional Conduct are adopted pursuant to Kosrae State Code, Section 6.101(f), and applied to all counsel admitted to practice law in Kosrae through GCO 2001-5. Wakuk v. Melander, 12 FSM Intrm. 73, 74 (Kos. S. Ct. Tr. 2003).

A legal services' agency's request to withdraw based solely upon the agency's policy, even though in the past the agency has routinely violated its own policy, will be denied. The Model Rules of Professional Conduct, which regulate the conduct of all legal counsel admitted to practice law in the State of Kosrae, as adopted by General Court Order pursuant to sate law, take precedence over the agency's policy. Wakuk v. Melander, 12 FSM Intrm. 73, 75 (Kos. S. Ct. Tr. 2003).

If the court learns that an attorney is providing legal advice and/or drafting documents for a *pro se* litigant but concealing that fact from the court, the court should consider ordering the attorney to file a formal notice of appearance or be subjected to sanctions. Panuelo v. Amayo, 12 FSM Intrm. 365, 373-74 (App. 2004)

When the plaintiff's letter specified that the defendant was given until March 31, 2004 to complete its remaining obligation to fill, spread and compact fill on the plaintiff's land, or face legal action and when despite

the letter's deadline, the plaintiff did not wait to take legal action, but on February 25, 2004, only seven days after the letter's date, the plaintiff, through his counsel, filed a small claim, the plaintiff's failure to wait until the end of March 2004 to take legal action, contrary to his February 18 letter, raises the issue of the plaintiff's and his counsel's good faith. Counsel, in compliance with the Model Rules of Professional Conduct, is expected to abide by his own offers made on his client's behalf. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 436 (Kos. S. Ct. Tr. 2004).

Good faith conduct is expected in matters filed in the Kosrae State Court. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 436 (Kos. S. Ct. Tr. 2004).

Any person admitted to practice law in the State of Kosrae may, after notice and hearing, be disciplined for violation of the Model Rules and an order may be entered pursuant to the Kosrae State Court's authority to discipline or disbar admitted trial counselors for cause. In re Mongkeya, 12 FSM Intrm. 536, 538 (Kos. S. Ct. Tr. 2004).

When a respondent legal counsel fails to timely respond to an order and notice of disciplinary proceeding and the factual allegations made therein and also fails to request, within the prescribed time, an extension of time to respond either verbally or in writing, the factual allegations made in the order and notice shall be deemed admitted by the respondent for the purpose of the disciplinary proceeding. In re Mongkeya, 12 FSM Intrm. 536, 538, 539 (Kos. S. Ct. Tr. 2004).

The disciplinary system for attorneys and trial counselors is structured not only to protect the public and maintain integrity of the judicial system, but also to inspire confidence in the public that the legal profession is being regulated. Consequently, it is imperative that that disciplinary proceedings be considered and initiated, as appropriate, where there has been allegations of misconduct by legal counsel. In re Mongkeya, 12 FSM Intrm. 536, 539 (Kos. S. Ct. Tr. 2004).

It is implicit in the legal counsel's role as an officer of the court that he owes a duty of candor and honesty to the court. Thus a legal counsel's first duty is to the court and to the proper administration of justice. A legal counsel's duty of candor and honesty to the court applies even when the counsel is acting as a party and not as legal counsel. In re Mongkeya, 12 FSM Intrm. 536, 539 (Kos. S. Ct. Tr. 2004).

No breach of professional ethics or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal profession than the knowledgeable use by a legal counsel of false testimony and evidence in the judicial process. For this violation of ethics, disbarment is the presumptive penalty. It is appropriate to disbar legal counsel who have submitted documents known to be false with the intent to mislead the court. In re Mongkeya, 12 FSM Intrm. 536, 539 (Kos. S. Ct. Tr. 2004).

Model Rule 3.3 requires legal counsel to take remedial measures when he discovers that false evidence was offered. The false evidence must be disclosed to the court and remedial action must be taken immediately. In re Mongkeya, 12 FSM Intrm. 536, 539 (Kos. S. Ct. Tr. 2004).

Fair competition in the adversary system is secured by prohibition against alteration, destruction and concealment of evidence. Rule 3.4 ensures that litigation is conducted fairly. It prohibits a lawyer from altering a document that has potential evidentiary value. Suspension from the practice of law is appropriate discipline for misrepresentation by counsel. In re Mongkeya, 12 FSM Intrm. 536, 540 (Kos. S. Ct. Tr. 2004).

A legal counsel's falsification of documents is prohibited under Model Rule 8.4(c). In re Mongkeya, 12 FSM Intrm. 536, 540 (Kos. S. Ct. Tr. 2004).

Model Rule 8.4(d) prohibits legal counsel from engaging in conduct that is prejudicial to the administration of justice. The Rule applies to both personal and professional conduct of legal counsel, encompasses conduct prohibited by other ethics rules, as well as conduct not specifically addressed by other rules. It includes conduct that has an adverse effect upon the administration of justice. In re Mongkeya, 12

FSM Intrm. 536, 540 (Kos. S. Ct. Tr. 2004).

In Kosrae, many persons are not sophisticated in knowledge of the judicial system. Consequently they place complete trust and faith in their legal counsel to properly present their claim and appear before the court. Improper conduct by one legal counsel reflects not only upon himself, but also upon the entire legal profession as a whole. The falsification of evidence and submission of false evidence prejudices the fairness of our legal system and leads to increased mistrust and skepticism by the public in the legal profession and the legal process. In re Mongkeya, 12 FSM Intrm. 536, 540 (Kos. S. Ct. Tr. 2004).

A trial counselor admitted to practice in the State of Kosrae is subject to the Model Rules of Professional Conduct, and violates those rules when he alters and presents those altered checks as evidence in a case in which he is a party. He will be suspended from the practice of law and must notify in writing all clients he represents in any pending matters and any opposing counsel in any pending matters that he has been disqualified by court order to act as legal counsel and the Chief Clerk shall unseal his file and remove his name from the listing of persons admitted to practice law in the State of Kosrae. In re Mongkeya, 12 FSM Intrm. 536, 540-41 (Kos. S. Ct. Tr. 2004).

An attorney's actions in preparing a notice of appeal for filing by the appellant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who wish to appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Civil Rule 11. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004).

Attorney involvement in drafting pro se court documents constitutes unprofessional conduct and is inconsistent with procedural, ethical and substantive rules of court. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court disapproves of ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. Counsel may, of course, always refer a pro se litigant to the court for the litigant to review a sample notice of appeal from a decision entered by Kosrae Land Court. Melander v. Heirs of Tilfas, 13 FSM Intrm. 25, 27 (Kos. S. Ct. Tr. 2004).

A counsel's actions in preparing the answer on behalf of a defendant as a pro se litigant, is called "ghostwriting." An attorney's behind-the-scenes document preparation for persons who appear pro se is not viewed favorably by courts. This surreptitious representation results in the litigant representing to the court that he is acting without the assistance of counsel, when this is not true. Importantly, ghostwriting permits an attorney to evade the responsibilities imposed by Rule 11, which requires attorneys to sign documents that they have prepared for filing. Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 81 (Kos. S. Ct. Tr. 2004).

The Kosrae State Court considers ghostwriting to constitute unprofessional conduct and disapproves ghostwriting of court documents for pro se litigants by legal counsel admitted to practice law in the State of Kosrae. The practice of ghostwriting prejudices the pro se litigant, who may believe that the counsel will continue to assist him throughout the litigation. Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 81-82 (Kos. S. Ct. Tr. 2004).

Counsel are put on notice that ghostwriting will be considered a violation of ethical and procedural rules of the Kosrae State Court. Counsel may assist pro se litigants in drafting and filing an answer to a summons and complaint, to avoid the entry of default. In cases where counsel assist pro se litigants with drafting and filing an answer, the answer shall reflect the counsel's limited assistance in preparing the answer, and shall sign the answer in that capacity, along with the signature of the pro se litigant. Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 82 (Kos. S. Ct. Tr. 2004).

– Disqualification of Counsel

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM Intrm. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM Intrm. 565, 571 (Truk S. Ct. Tr. 1987).

Where a member of the office of the public defender has a conflict of interest, based upon his familial relationship with the victim of the crime of which the defendant is accused, but where he is under no traditional obligation to cause harm to the defendant and has done nothing to make other members of the office feel that they are under any such obligation, and where there is no showing that the conflict would have any actual tendency to diminish the zeal of any other members of the office, the conflict of the first counsel is not imputed to the other members of the office. FSM v. Edgar, 4 FSM Intrm. 249, 251 (Pon. 1990).

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM Intrm. 252, 254 (App. 1990).

The imputed disqualification provision of Rule 1.10(a) of the FSM Model Rules of Professional Conduct is not a *per se* rule and where the other attorneys associated with the attorney who seeks disqualification are able to give full loyalty to the client it is proper for the court to find that the disqualifying condition is not imputed to others. Office of the Public Defender v. FSM Supreme Court, 4 FSM Intrm. 307, 309 (App. 1990).

Under Rule 3.7 of the Model Rules of Professional Conduct, when a party's counsel believes the opposing party's attorney should be required to testify as to information which may be prejudicial to the opposing party, it is appropriate for counsel for the first party to move to disqualify opposing counsel from further representation of the opposing party, but this is not the only procedure which may be followed and counsel who fails to file such a motion may not be sanctioned for his failure in absence of harm to the opposing party or a showing of bad faith. Bank of Guam v. Sets, 5 FSM Intrm. 29, 30 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM Intrm. 130, 135 (Chk. S. Ct. Tr. 1991).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM Intrm. 12, 13-14 (App. 1993).

The rules, MRPC 1.10, for vicarious disqualification of attorneys in the same law firm do not apply to government lawyers who are governed by MRPC 1.11(c). MRPC 1.11 does not impute the disqualification of one member of a government office to the other members. In re Extradition of Jano, 6 FSM Intrm. 26, 27 (App. 1993).

An attorney is not disqualified from representing multiple parties against a defendant on the grounds that he did not join as defendants former employees of some of the plaintiffs who would be liable if the defendant is liable. Pohnpei v. Kailis, 6 FSM Intrm. 460, 462-63 (Pon. 1994).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM Intrm. 414, 415 (Chk. S. Ct. Tr. 1996).

Model Rule 1.9 is inapplicable to cases where an attorney is representing two clients at the same time because it applies to a conflict arising from the representation of a former client. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 440 (Chk. 1998).

Model Rule 1.7(b) allows representation of multiple clients if the lawyer reasonably believes his representation will not be adversely affected, and the client consents after consultation. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 440 (Chk. 1998).

Model Rule 1.11(c) contemplates successive private and government employment so long as the lawyer does not participate in a matter in which he participated personally and substantially while in private practice so when steps have been taken to insure that a government lawyer would do no work related to his private employment the Model Rules have been complied with. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 440-41 (Chk. 1998).

Allegations of foul language and intimidation in a settlement conference are alone insufficient grounds for removing an attorney from a case at a late stage of the litigation. Bank of Hawaii v. Helgenberger, 9 FSM Intrm. 260, 262 (Pon. 1999).

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, the court's inquiry is generally required when a lawyer represents multiple defendants. Nix v. Etscheit, 10 FSM Intrm. 391, 396 (Pon. 2001).

The Model Rules are not designed to be used by one litigant to make prosecuting or defending the action more difficult for his adversary. Therefore, a court considers a motion to disqualify counsel with caution, considering the possibility that the motion is potentially being used as a technique of harassment. Nix v. Etscheit, 10 FSM Intrm. 391, 396 (Pon. 2001).

The test for a lawyer to determine whether a conflict of interest exists in representing more than one client is found in MRPC Rule 1.7. Nix v. Etscheit, 10 FSM Intrm. 391, 396 (Pon. 2001).

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

Even if a direct conflict exists between defendants' counsel's representation of an individual and a two corporations, Rule 1.7 allows a lawyer to represent all of the defendants if the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

Disqualification of counsel is not warranted when counsel believes that his representation of all defendants will not adversely affect his representation of any one of the defendants; when the reasons for this belief were provided to all defendants in writing, and all defendants consented after consultation; when the plaintiffs have not introduced any evidence that would lead the court to doubt counsel's statement; and when

the court also finds that his belief that counsel's representation of all defendants will not adversely affect the representation of any one of the defendants is legitimately reasonable. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM Intrm. 391, 397-98 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

A lawyer cannot act as an advocate at a trial in which the lawyer is likely to be a witness except when: 1) the testimony relates to an uncontested issue; 2) the testimony relates to the nature and value of legal services rendered in the case; or 3) disqualification of the lawyer would work substantial hardship on the client. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

Plaintiffs' desire to call opposing counsel as a witness does not represent a basis for opposing counsel's disqualification when, although counsel may have knowledge of evidence of material matters in the case, the plaintiffs have not established that opposing counsel is the only witness who could testify about such evidence, when the plaintiffs can introduce this evidence by other methods, and when it would constitute a substantial hardship to a defendant to disqualify her attorney of over fifteen years and require her to find another. Nix v. Etscheit, 10 FSM Intrm. 391, 399 (Pon. 2001).

A lawyer who has formerly represented a client in a matter is not disqualified from representing an opposing party in another matter when that matter is not substantially related to the to the previous matter and when the lawyer has received no confidential information from the former client relating to the current matter. Nix v. Etscheit, 10 FSM Intrm. 391, 399 (Pon. 2001).

There is no conflict of interest for Legislative Counsel to represent a Senator challenging a law passed by the Legislature when is not a challenge of the Legislature as an institution because it is the Executive that is charged with the duty of defending challenged laws, not the Legislature, and there is no conflict of interest for Legislative Counsel to represent a Senator asserting legislative privilege when the Senator and the Legislature have similar interests with respect to interpretation of the privilege provided by the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM Intrm. 26, 28 (Kos. S. Ct. Tr. 2002).

Rule 1.7 permits the attorney to continue representation even where the representation is adverse to

two or more clients, so long as each client consents after consultation. Kosrae v. Sigrah, 11 FSM Intrm. 26, 28 (Kos. S. Ct. Tr. 2002).

The relevant inquiry when conflicting representation is alleged is whether the subject matter of the two representations is substantially related. If the attorney could have obtained confidential information in representing one party that he could thereafter use in representing the second client, the interests are conflicting and the attorney must be disqualified. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460 (Chk. S. Ct. App. 2003).

A party alleging representation of conflicting interests must show that there is a substantial relationship between the subject matters of the representations. This is especially so where the party seeking the disqualification is only a "vicarious" client. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460 (Chk. S. Ct. App. 2003).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460 (Chk. S. Ct. App. 2003).

If each member of the Chuuk Legislature could consider the Legislative Counsel his "personal lawyer," then the Legislative Counsel would have perpetual conflicts of interest which would prevent him from providing legal counsel and advice to his true client, the Legislature as a collective body. The fact that the Legislature retains counsel to serve its collective interests does not entitle every member to assert the disqualification of that counsel in an unrelated matter, where only the member's personal interests are involved. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460 (Chk. S. Ct. App. 2003).

A motion to disqualify appellant's counsel in an election contest will be denied when appellee's claim of "vicarious" representation fails due to a complete lack of evidence demonstrating that the counsel provided to the Sixth Chuuk Legislature is substantially related to the issues presented in this election contest, namely the election of a member to the House of Representatives for the Seventh Chuuk Legislature. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460-61 (Chk. S. Ct. App. 2003).

When a summary judgment motion is clearly on behalf of two defendants and makes them adverse to a third defendant, it is clear that the third defendant needs to attempt to retain other counsel. Fredrick v. Smith, 12 FSM Intrm. 150, 153 n.1 (Pon. 2003).

The question of disqualification of counsel, including prosecutors, is largely within the trial court's discretion. FSM v. Wainit, 12 FSM Intrm. 172, 177 (Chk. 2003).

A government lawyer, like any lawyer, cannot represent a client if the representation of that client may be materially limited by the lawyer's own interests. The lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM Intrm. 172, 178 (Chk. 2003).

The court declines to establish a bright line rule that any prosecutor who has some involvement with another case involving the defendant must always be disqualified. To conclude that prosecutors who are allegedly later victims of offenses committed by someone they are prosecuting must always be disqualified from continuing to prosecute would set an unhealthy precedent. It would provide an unwanted incentive for a criminal defendant who sought to disqualify a certain prosecutor to obtain his disqualification through extralegal means. FSM v. Wainit, 12 FSM Intrm. 172, 178-79 (Chk. 2003).

When prosecutors have a special emotional stake or interest in a case, their disqualification from any future involvement with the prosecution is warranted. The current prosecutor will therefore make certain that there is no contact with the former prosecutors about the case and that they have no access to the case file. The current prosecutor may be ordered to file and serve a notice detailing all steps taken to implement this

precaution. FSM v. Wainit, 12 FSM Intrm. 172, 179 (Chk. 2003).

Disqualification of all lawyers in a government office when one of them is disqualified is a question within the trial court's discretion. Unlike private law firms where the disqualification of one member of the firm requires the disqualification of the firm, the disqualification of all government attorneys in an office is not required when one of them is disqualified. FSM v. Wainit, 12 FSM Intrm. 172, 179 (Chk. 2003).

There is no basis to disqualify the current prosecutor and the entire FSM Department of Justice when no member of the department is either an alleged victim or a witness in the case; when the current prosecutor was not a member of the department when the events occurred that ultimately lead to the disqualification of the other assistant attorneys general; when neither of the disqualified attorneys have any supervisory power over the current prosecutor and he is not subordinate to them; and when, if he has not already done so, he can and will be ordered to have no contact with them concerning the case and to keep all case files segregated from all other department files so that no other department employee can obtain access to them. FSM v. Wainit, 12 FSM Intrm. 172, 180 (Chk. 2003).

A lawyer must not represent a client if the representation will be "materially limited" by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected, and the client consents after consultation. George v. Nena, 12 FSM Intrm. 310, 318 (App. 2004).

Rule 1.9 is aimed at protecting the former client rather than the current client. It is the former client who is the one who may consent or refuse to consent if the positions are adverse. George v. Nena, 12 FSM Intrm. 310, 318-19 (App. 2004).

When there has been no showing that the appellant's attorney had an actual conflict, and, even if there was some conflict, the appellant must demonstrate that the trial judge committed plain error by failing to disqualify counsel from representing him. George v. Nena, 12 FSM Intrm. 310, 319 (App. 2004).

The an appellant is not entitled to reversal and the trial judge did not commit any plain error when he judge did not inquire into the appellant's attorney's potential conflict of interest and when the appellant made no showing that the alleged conflict adversely affected counsel's performance since the attorney competently presented witnesses, entered evidence and made relevant objections. A conflict of interest is a conflict that affects counsel's performance – as opposed to a mere theoretical division of loyalties and without such a showing, the appellant cannot demonstrate that his attorney's connection to previous stages of the proceedings, related to an adjacent land parcel, affected the trial de novo's fairness or integrity. George v. Nena, 12 FSM Intrm. 310, 319 (App. 2004).

A government lawyer, like any other lawyer, cannot represent the government if the representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests may include emotional interests. An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. FSM v. Wainit, 12 FSM Intrm. 360, 363 (Chk. 2004).

Attorney, Trial Counselor and Client – Disqualification of Counsel; Criminal Law and Procedure – Prosecutors

Since a government lawyer's public responsibility involves the exercise of discretion, a prosecutor may be disqualified when the prosecutor suffers from a conflict of interest which might prejudice him against the accused and thereby affect, or appear to affect, his ability to impartially perform the discretionary function of his office. FSM v. Wainit, 12 FSM Intrm. 360, 363 (Chk. 2004).

Since a prosecutor has wide discretion in deciding whether to initiate a particular criminal prosecution, a prosecutor's emotional interest sufficiently strong to impair the impartial exercise of this discretion will disqualify the prosecutor from any participation in the matter, including filing the information. FSM v. Wainit, 12 FSM Intrm. 360, 364 (Chk. 2004).

When prosecutors filed a case just two months after the frightening events allegedly caused by the defendant, and when it seems reasonable for them to have had emotional interests that would disqualify them from impartially exercising their discretion whether to prosecute the same defendant in any new cases, their failure to disqualify themselves raises an appearance of impropriety. Accordingly, a motion to disqualify those prosecutors will be granted. FSM v. Wainit, 12 FSM Intrm. 360, 364 (Chk. 2004).

When an information was filed by two prosecutors who should have been disqualified from filing it or being involved in their official capacity in the bringing of charges against the defendant, then upon a timely objection, the information will be dismissed. FSM v. Wainit, 12 FSM Intrm. 360, 364 (Chk. 2004).

A lawyer cannot act as advocate in a trial in which the lawyer is likely to be a necessary witness. FSM v. Wainit, 12 FSM Intrm. 376, 380 (Chk. 2004).

A government lawyer cannot represent the government when representation of that client may be materially limited by the lawyer's own interests. A lawyer's own interests can include emotional interests. FSM v. Wainit, 12 FSM Intrm. 376, 380 (Chk. 2004).

An emotional interest, in order to be disqualifying, must create a bias or hostility in the government lawyer sufficiently strong to interfere seriously with the lawyer's exercise of public responsibility. Being the victims in a crime in which force was allegedly used is just such a strong emotional interest to disqualify a government attorney from prosecuting that same crime. A prosecutor who has a conflict of interest cannot administer justice. FSM v. Wainit, 12 FSM Intrm. 376, 380 (Chk. 2004).

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9. Rules 1.7 and 1.9 deal with conflicts of interest. FSM v. Wainit, 12 FSM Intrm. 376, 380 (Chk. 2004).

Since a lawyer's conflicts are usually imputed to all in the lawyer's office or firm, one member's disqualification generally requires the entire firm's disqualification, but unlike private law firms, the disqualification of all government attorneys in an office is not required when one is disqualified. This different treatment for private and government law offices is considered to stem, in part, from government agency attorneys not being bound by a common profit motive as are lawyers in private practice, and in part because a prosecutor's duty is to seek justice, not merely to convict. FSM v. Wainit, 12 FSM Intrm. 376, 380 & n.2 (Chk. 2004).

One who was the Attorney General when the Governor signed a release of property in a party's favor, and who in fact signed the release as Attorney General, is clearly barred by the Rules of Professional Conduct from representing a plaintiff in a suit over that property against the state and that party. Hartman v. Chuuk, 12 FSM Intrm. 388, 394 & n.9 (Chk. S. Ct. Tr. 2004).

Since statutes and office policy prohibit a newly-hired assistant attorney general from continuing to represent clients in a suit with the state as a party-defendant, that attorney will be declared disqualified representing either the clients or the state and directed to immediately assist his former clients in obtaining substitute counsel. Hartman v. Chuuk, 12 FSM Intrm. 388, 396 (Chk. S. Ct. Tr. 2004).

A former employee of the now defunct Kosrae State Land Commission who was not employed by the Land Commission in 1984 when the Determination of Ownership was issued for the subject parcel does not have any conflict of interest in this matter. Skilling v. Kosrae State Land Comm'n, 13 FSM Intrm. 16, 18 (Kos. S. Ct. Tr. 2004).

When plaintiffs' counsel admitted that he had signed the verified complaint on behalf of another and that the other had been represented through proxy at a meeting during which the lawsuit was discussed and when, although that other later appeared and testified that he did not consider himself to be counsel's client for the civil action, that he did not give permission for the complaint to be filed on his behalf, and that he does not want to be involved in this lawsuit but in a deposition did state under oath that he asked the proxy to act on

his behalf, the court may conclude that at the time the complaint was filed, plaintiffs's counsel had reasonable basis to accept the proxy's representation of the other and his approval to file the complaint on his behalf and counsel will not be disqualified on that basis. Allen v. Kosrae, 13 FSM Intrm. 55, 57-58 (Kos. S. Ct. Tr. 2004).

Model Rule 7.3 prohibits the solicitation of professional employment from a prospective client with whom the lawyer had no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. But when a person attended and participated in a meeting regarding the subject of this matter and in doing so, expressed his interest in this matter, and when counsel's later contact with him after the meeting did not involve harassment or duress, counsel's contact with him does not provide an adequate basis for disqualification of counsel. Allen v. Kosrae, 13 FSM Intrm. 55, 58 (Kos. S. Ct. Tr. 2004).

Plaintiff's counsel's employee's disruptive actions at a meeting at which a defendant presided do not provide an adequate basis for disqualification of plaintiffs' counsel because she was also a parent of children who attend Kosrae High School and therefore had adequate reason to attend that meeting as an interested parent and because the defendants did not present sufficient evidence to prove that her actions at that meeting were encouraged or supported by plaintiffs' counsel. Allen v. Kosrae, 13 FSM Intrm. 55, 58 (Kos. S. Ct. Tr. 2004).

– Fees

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 Intrm. 200, 205 (Pon. 1986).

Recognizing that courts in most of the world normally do award attorney's fees to the prevailing party, the rule allowing a prevailing party to obtain an award of attorney's fees should perhaps be applied more liberally in the Federated States of Micronesia than in the United States. Semens v. Continental Air Lines, Inc. (II), 2 FSM Intrm. 200, 208 (Pon. 1986).

The rule that each party to a suit normally must pay its own attorney's fees is the proper foundation upon which the system in the Federated States of Micronesia should be built. Semens v. Continental Air Lines, Inc. (II), 2 FSM Intrm. 200, 208 (Pon. 1986).

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. Semens v. Continental Air Lines, Inc. (II), 2 FSM Intrm. 200, 208 (Pon. 1986).

There is no established market for legal services in Kosrae which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 254 (Kos. 1986).

Because the social and economic situation in the Federated States of Micronesia is radically different from that of the United States, rates for attorney's fees set by United States courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within the Federated States of Micronesia. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 255 (Kos. 1986).

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 259 (Kos. 1986).

Where an action is brought pursuant to 11 F.S.M.C. 701(3), allowing civil liability against any person who deprives another of his constitutional rights, the court may award reasonable attorney's fees to the prevailing party based on the customary fee in the locality in which the case is tried. Tolenoa v. Kosrae, 3 FSM Intrm. 167, 173 (App. 1987).

In an action brought under 11 F.S.M.C. 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of $100 per hour for legal services in the community in which the case is brought, and when this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the $100 hourly rate. Tolenoa v. Kosrae, 3 FSM Intrm. 167, 173 (App. 1987).

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

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 Intrm. 48, 49-50 (Pon. 1989).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 184 (Pon. 1990).

Any award of attorney's fees must be based upon a showing, and a judicial finding, that the amount of the fees is reasonable. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 184 (Pon. 1990).

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 185 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 220 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 221 (Pon. 1990).

11 F.S.M.C. 701(3) is comprehensive and contains no suggestion that publicly funded legal services are outside the clause or should be treated differently than other legal services. Plais v. Panuelo, 5 FSM Intrm. 319, 320-21 (Pon. 1992).

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 Intrm. 319, 321 (Pon. 1992).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM Intrm. 140, 142 (Pon. 1993).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM Intrm. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM Intrm. 230, 232-33 (Pon. 1993).

In collection cases, creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

In the absence of statutory authority there is a general presumption against attorney's fees awards, and they should not be awarded as standard practice. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617 (Chk.

1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617-18 (Chk. 1994).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 442, 447 (Pon. 1996).

Where attorney's fees are to be paid out of funds collected and deposited with the court, motions for fee awards will be denied without prejudice when no funds have yet been collected. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 522, 528 (Pon. 1996).

When allowing attorney's fee awards courts have broad discretion based on a standard of reasonableness in light of the case's circumstances. A trial court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to contract or statute, and it should provide reasons on the record to explain its exercise of discretion in awarding the figure it selects. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 673 (App. 1996).

It is an abuse of the trial court's discretion to award attorney's fees and costs without first determining their reasonableness. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 673 (App. 1996).

The "private attorney general" theory for an award of attorney's fees whereby a successful party is awarded attorney's fees when it has vindicated an important public right that required private enforcement and benefitted a large number of people has never been applied in the FSM. Damarlane v. United States, 8 FSM Intrm. 45, 55 (App. 1997).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM Intrm. 129, 134 (App. 1997).

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

The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Davis v. Kutta, 8 FSM Intrm. 218, 220 (Chk. 1997).

In determining the amount of attorney's fees to award the prevailing party in a civil rights suit the court should consider United States civil rights decisions without being bound by them. Davis v. Kutta, 8 FSM Intrm. 218, 221 (Chk. 1997).

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

A contingency fee, like any attorney's fee, must meet the requirements of Rule 1.5 of the Model Rules of Professional Conduct, which provides that a lawyer's fee shall be reasonable. Davis v. Kutta, 8 FSM Intrm. 218, 222 (Chk. 1997).

A contingent fee agreement shall be in writing and state the method by which the fee is to be determined, and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome and, if there is a recovery, showing the remittance to the client and the method of

determination. Davis v. Kutta, 8 FSM Intrm. 218, 222 (Chk. 1997).

Contingency fees are prohibited in both domestic relations and criminal matters. Davis v. Kutta, 8 FSM Intrm. 218, 222 (Chk. 1997).

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

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

A client is free to contract with counsel along any lines reasonable under FSM MRPC Rule 1.5, and such a fee, if it is reasonable, is enforceable against the client regardless of the fee awarded by the court. Davis v. Kutta, 8 FSM Intrm. 218, 224 (Chk. 1997).

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

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

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

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392 (Kos. 1998).

When at the early juncture of the parties' cross motions for summary judgment it appears that the defendant's writing of bad checks may have been in bad faith or it may have been negligent, an attorney's fees award is not appropriate in the absence of a finding that defendant's conduct was vexatious or in bad faith. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392 (Kos. 1998).

The fact that a defendant prevails in a motion for summary judgment in such a way as to defeat a significant portion of a plaintiff's claim is a fact that a court should consider relative to the plaintiff's claim for attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392 (Kos. 1998).

When there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 18 (Yap 1999).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM Intrm. 75, 79 (Kos. 1999).

In determining a reasonable attorney's fees award, the fair hourly rate in the locality is used; time

devoted to travel is not included; and time records for intra-office consultations between attorneys, which duplicated the others time were reduced. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 110 (Chk. 1999).

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 Intrm. 106, 113 (Chk. 1999).

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

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

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A motion for attorney's fees is unlike a motion to alter or amend a judgment. It does not imply a change in the judgment, but merely seeks what is due because of the judgment. It is, therefore, not governed by the provisions of Rule 59(e). O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

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

An attorney's fee must be reasonable, and the court must make such a finding. Except in unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103-04 (Kos. 2001).

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

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

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 Intrm. 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 Intrm. 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 Intrm. 220, 223 (Chk. S. Ct. App. 2001).

The "private attorney general" theory has never been judicially applied in the FSM, nor has it been judicially prohibited. Udot Municipality v. FSM, 10 FSM Intrm. 354, 361 (Chk. 2001).

When the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance and the cost to prevailing party appears to outweigh the potential benefits it achieved, the case is a suitable one for the equitable application of the "private attorney general" doctrine and it is proper to adopt the principle. Udot Municipality v. FSM, 10 FSM Intrm. 354, 361-62 (Chk. 2001).

The first step in resolving a fee dispute between an attorney and a former client is to consult the written fee agreement between the parties, if there is one. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

Contingent fee contracts, with some exceptions, are acceptable in the FSM. A contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

Courts should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties. Nevertheless, an attorney's fee must still be reasonable or the court may reduce it.

Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

When a written fee agreement, freely negotiated between competent and knowledgeable parties, does not require the attorney to preform any work after judgment is entered, and expressly states that the attorney's fee is "20% of the gross amount henceforth collected by the client," not 20% of the gross amount collected by the attorney, and when the attorney has performed all of the acts that his contract required of him, the attorney is entitled to compensation according to the contract's terms. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496-97 (Chk. 2002).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 497 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 497 (Chk. 2002).

When an attorney is recovering his fees under the contract's terms and not under quantum meruit, he may enforce a common law charging lien in the original case instead of having to seek his fees in a separate lawsuit. Generally, an attorney is entitled to a common law lien for his fees upon his client's cause of action and the funds it recovers. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 497 (Chk. 2002).

An attorney's charging lien is not created by statute, but has its origin in the common law, and is governed by equitable principles and is based on the equitable doctrine that an attorney should be paid out of the proceeds of the judgment secured by that attorney. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 497 (Chk. 2002).

In fashioning a fee award, it has always been the court's function to determine what attorney's fees are reasonable and to award no more than that. When necessary, the court will reduce an attorney fee request to an amount it determines reasonable instead of denying any fee recovery at all. Udot Municipality v. FSM, 10 FSM Intrm. 498, 500 (Chk. 2002).

An attorneys' fee award of $120 per hour is reasonable when there have been other fee awards of $120 per hour in the FSM, when the attorneys' work was of high quality, the case was a difficult one, and novel issues were presented and the relief sought was ultimately achieved. Udot Municipality v. FSM, 10 FSM Intrm. 498, 500 (Chk. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 515, 518 (Pon. 2002).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of a plaintiff's claim for attorney's fees and costs. Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which compensation is claimed. Jackson v. George, 10 FSM Intrm. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract

provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM Intrm. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of the plaintiff's claim for attorney's fees and costs. Any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Jackson v. George, 10 FSM Intrm. 531, 533 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court will adopt the 15% limitation established in Bank of Hawaii v. Jack, and when the total amount of the plaintiff's attorney fees claim is excessive, but the plaintiff's claim for trial preparation, representation at trial and preparation of the written summation is reasonable, a 15% attorney fees award is reasonable and just. Jackson v. George, 10 FSM Intrm. 531, 533 (Kos. S. Ct. Tr. 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 Intrm. 520, 534 (Chk. 2003).

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

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

A counsel's fee must be reasonable. The Rules strongly suggest that a fee arrangement be made in writing and given to the client. This makes the fee arrangement clear and reduces the possibility of confusion. Ittu v. Palsis, 11 FSM Intrm. 597, 598 (Kos. S. Ct. Tr. 2003).

The Rules allow a counsel to require advance payment of a fee by the client, but the counsel is required to return any portion which has not been earned. Ittu v. Palsis, 11 FSM Intrm. 597, 598 (Kos. S. Ct. Tr. 2003).

When the plaintiff has requested supplementary attorney's fees and the defendant has not objected and when this goes to an issue that is not subject to the pending appeal, the trial court has jurisdiction to grant the motion. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 13 (Chk. 2003).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." FSM v. Udot Municipality, 12 FSM Intrm. 29, 36 n.4 (App. 2003).

The private attorney general theory should be available for prevailing litigants to recover their attorney fees in bringing an action if they meet the criteria because when government officials' acts are contrary to the Constitution, and these same officials have access to the significant resources of the national government to defend their actions, there is a danger that the courts may become inaccessible to members of the public.

The government does have finite and scarce resources, but these are not wasted on litigation that benefits the public interest and vindicates important societal rights. FSM v. Udot Municipality, 12 FSM Intrm. 29, 55 (App. 2003).

The standards for application of the private attorney general theory are rigorous, and only in cases where a litigant is successful in pursuing a case that confers a substantial benefit on the public will the government be liable for attorney fees. FSM v. Udot Municipality, 12 FSM Intrm. 29, 55 (App. 2003).

The private attorney general theory should apply in the FSM, provided that the criteria are strictly met. FSM v. Udot Municipality, 12 FSM Intrm. 29, 55 (App. 2003).

A party seeking attorney's fees under the private attorney general theory must demonstrate that it vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. FSM v. Udot Municipality, 12 FSM Intrm. 29, 56 (App. 2003).

A prevailing municipality may recover its attorney's fees under a private attorney general theory when the case addressed significant constitutional and other issues of public importance; when the whole population of the FSM benefitted from requiring greater accountability in the use of public project funds and requiring the Congress to legislate within constitutional limitations, especially when the legislation involves appropriation of large sums of funds intended for public projects; and when the case required private enforcement, as municipal governments in the FSM do not have the resources or facilities to maintain legal offices on the same scale as the state or national governments and, when the rights of a municipality's residents are affected, they must spend municipal funds to hire a private attorney. FSM v. Udot Municipality, 12 FSM Intrm. 29, 56 (App. 2003).

Although a case of first impression, equity favors the party that has successfully established all of the factors to meet the test for application of the private attorney general theory. When it has undertaken to litigate an important case of vital interest to the nation and has expended resources which are substantial in proportion to its gain, it should be reimbursed for its reasonable expenses in litigating. FSM v. Udot Municipality, 12 FSM Intrm. 29, 57 (App. 2003).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. LPP Mortgage Ltd. v. Maras, 12 FSM Intrm. 112, 113 (Chk. 2003).

It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness, and it is especially important for the court to scrutinize carefully and to strictly construe contractual provisions which relate to the payment of attorney's fees. LPP Mortgage Ltd. v. Maras, 12 FSM Intrm. 112, 113 (Chk. 2003).

The court is the final arbiter of whether an attorney fee award it orders is reasonable. Merely because an attorney has billed his client for a certain amount does not make that amount reasonable for a court-ordered award. LPP Mortgage Ltd. v. Maras, 12 FSM Intrm. 112, 113 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM Intrm. 112, 113 (Chk. 2003).

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

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an

11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 137 (Chk. 2003).

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

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454, 455 (Chk. 2004).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM Intrm. 454, 456 (Chk. 2004).

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. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

Attorney's fees that are awarded on the basis of contract become part of the plaintiffs' damages in its case. When the one party's wrongful act has involved him in litigation with another, and the other must pursue a legal remedy, then the attorney's fees so incurred should be treated as damages that flow from the original

wrongful act. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 541, 543 (Pon. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 541, 543 (Pon. 2004).

The trial court has no jurisdiction to award attorney's fees as a sanction for frivolous appeals under FSM Appellate Rule 38. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 541, 543 (Pon. 2004).

When awarding attorney's fees, a court has broad discretion based on a standard of reasonableness in light of the case's circumstances. A fee application must be based on detailed supporting documentation showing the date, the work done, and the time spent on each service provided. The court must determine the amount of a reasonable fee and award no more than that. Where required, the court will reduce the amount of the award sought as opposed to denying the request altogether. The reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 39 (Pon. 2004).

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 39 (Pon. 2004).

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 39-40 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 40 (Pon. 2004).

A fee application must be supported by detailed supporting documentation showing the date, the work done, and the amount time spent on each service. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 40 (Pon. 2004).

In Micronesia, an attorney's fee of $120 an hour has been found to be reasonable where there have been other fee awards of that amount and the attorney's work was of high quality, the case was a difficult one, and novel issues were presented. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 41 (Pon. 2004).

When the court is unaware of any FSM case in which a fee of greater than $120 an hour was awarded and no authority has been provided to support the contention that in the current economic climate of the FSM, an attorney's fee of more than twice the hourly rate previously recognized as reasonable may be found to be reasonable, the fee award will be reduced to $120 an hour. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 41 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 41 (Pon. 2004).

An hourly fee of $75 is reasonable and is well within the limits that have been recognized in the FSM. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 43 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM Intrm. 60, 62 (Kos. 2004).

A trial court retains jurisdiction to issue an order assessing fees and costs even if issued after an appeal has been filed. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

Even though the parties stipulated to the amount of attorney's fees and to the judgment the court must still make a determination of reasonableness for fees to be entered in a judgment. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 170 (Kos. 2005).

– Withdrawal of Counsel

Although the trial court may grant a public defender's motion to withdraw as counsel pursuant to FSM Model Rule of Professional Conduct 1.7(b) because the public defender adopted the son of the victim's nephew, the trial court may deny the same public defender's motion to relieve the entire staff of the Public Defender's Office pursuant to Model Rule 1.10(a) because the public defender's conflict was personal and not imputed to the Public Defender staff. Office of Public Defender v. Trial Division, 4 FSM Intrm. 252, 254 (App. 1990).

Although an attorney is competent to testify as a witness on behalf of a client, testimony by an attorney representing a party, except in limited circumstances, creates a conflict of interest. An attorney under such a conflict has an ethical duty to withdraw from representation, except in limited cases, including where disqualification would cause an undue hardship to the client. Determining whether a conflict exists is primarily the responsibility of the lawyer involved. Triple J Enterprises v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 385, 386 (Pon. 1996).

A trial counselor who is a member of a plaintiff class that is seeking money damages from the state has a conflict and cannot represent the state and will be allowed to withdraw. Oster v. Bisalen, 7 FSM Intrm. 414, 415 (Chk. S. Ct. Tr. 1996).

A court cannot allow defense counsel to withdraw so that the defendant can seek new counsel to resume trial when the trial is well into the defendant's case-in-chief and when that new counsel was not present during trial and has not heard either the prosecution's witnesses' testimony or that of the defense witnesses who have already testified. FSM v. Jano, 9 FSM Intrm. 470a, 470b (Pon. 2000).

Defense counsel cannot, in the middle of a criminal trial, precipitously accept other employment, without making the acceptance of employment conditional, commit himself to begin work "immediately," and then move for withdrawal because defense counsel is under an ethical obligation to continue as counsel until the criminal trial ends, even if that means postponement of his departure for new employment. FSM v. Jano, 9 FSM Intrm. 470a, 470b (Pon. 2000).

When ordered to by a tribunal, defense counsel is ethically obligated to continue the representation even if good cause to withdraw is present. Should the criminal trial end in a conviction, new counsel may be obtained for sentencing. FSM v. Jano, 9 FSM Intrm. 470a, 470b (Pon. 2000).

Denying withdrawal of counsel in the middle of a criminal trial is within the court's discretion, and as long as counsel is providing effective assistance, a criminal defendant has the choice of either continuing with that counsel or representing himself pro se. FSM v. Jano, 9 FSM Intrm. 470a, 470b (Pon. 2000).

An attorney's motion to withdraw after advising his clients at depositions will be denied because the

record contains no evidence that defendants discharged him at the depositions' end, or withdrew their authorization for him to represent them in all aspects of this proceeding; because a client's failure to contact counsel has no effect on representation especially when counsel has provided no evidence of his efforts to contact the client; because counsel's failure to secure a fee agreement between himself and his clients is not a basis for terminating representation; and because the case is ready for trial, and withdrawal of counsel at this juncture would materially compromise defendants' interests. Beal Bank S.S.B. v. Salvador, 11 FSM Intrm. 349, 350 (Pon. 2003).

When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end. He then remains counsel of record until, and if, the court grants him permission to withdraw. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

Counsel's failure to follow the rules in withdrawing from a case can come back to haunt him. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

Counsel's merely relying on his hope that verbally informing the clerk that he was no longer counsel would be sufficient to withdraw as counsel is not enough. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

When a trial counselor defendant is still considered plaintiff's counsel since he has not withdrawn from the plaintiff's land matter, he should inform the plaintiff in writing of his withdrawal if he should seek to withdraw from representing the plaintiff based upon the parties' inability to work together. Ittu v. Palsis, 11 FSM Intrm. 597, 599 (Kos. S. Ct. Tr. 2003).

When counsel who signed an answer to the amended complaint on behalf of both defendants and appeared for both defendants, only withdrew from representing one defendant, they remain counsel for the other. Jackson v. Pacific Pattern, Inc., 12 FSM Intrm. 18, 19 (Pon. 2003).

Under the Model Rules of Professional Conduct, which regulates conduct of legal counsel admitted to practice law in the State of Kosrae, Rule 1.7 prohibits a counsel from representing a client if representation of that client may be materially limited by the counsel's responsibilities to a third person or the counsel's own interests. A counsel may not represent the state in prosecuting a criminal action, if the counsel's prosecution will be materially limited by his personal relationship to the defendant. Kosrae v. Nena, 12 FSM Intrm. 20, 23 (Kos. S. Ct. Tr. 2003).

A prosecutor's duty is to zealously and diligently prosecute criminal charges which are supported by probable cause, in the public interest, and, in his position as a public servant, to serve the public interest, consistent with the Model Rules of Professional Conduct. If the prosecutor cannot fulfill his prosecutorial duties in a particular case due to a conflict, including a personal relationship to the defendant, then the prosecutor is obligated to withdraw from the case. Kosrae v. Nena, 12 FSM Intrm. 20, 23 (Kos. S. Ct. Tr. 2003).

Counsel may withdraw from representation of a client if it could be accomplished without material adverse effect on the interests of the client or if: 1) the client continues conduct that the counsel believes is criminal or fraudulent, or 2) the client has used counsel's services to commit a crime or fraud; or 3) the client fails to substantially fulfill an obligation to the counsel regarding counsel's services and has been given warning (i.e. non-payment of fees, no cooperation in discovery); or 4) the client insists upon pursuing an objective that counsel believe is repugnant or imprudent; or 5) the representation will result in an unreasonable financial burden on the counsel, or 6) when other good cause exists. Wakuk v. Melander, 12 FSM Intrm. 73, 74 (Kos. S. Ct. Tr. 2003).

A motion to withdraw as counsel will be denied when withdrawal from representation will have material adverse effect on the client's interests because the matter is pending for hearing and withdrawal is sought right before the hearing, and when counsel has failed to cite to, or provide any grounds under Model Rule of

Professional Conduct 1.16 as the basis for withdrawal. Wakuk v. Melander, 12 FSM Intrm. 73, 74-75 (Kos. S. Ct. Tr. 2003).

That an appointed lawyer is busy is insufficient to permit his withdrawal since lawyers are generally busy and because one cause of this, the lawyer's status as a state constitutional convention delegate, is of limited duration and will end before this case progresses much further. FSM v. Kansou, 13 FSM Intrm. 157, 158 (Chk. 2005).

That a criminal defendant is not comfortable with an appointed attorney because most of the counsel's experience was with civil cases and has asked counsel assist him in finding an attorney or attorneys with a criminal background is insufficient to permit withdrawal of counsel since every defendant facing prosecution would like an attorney with the most criminal experience possible and with more experience than the one they have got. But none are available that the court can appoint since the amount of legal talent available in the Federated States of Micronesia and admitted to practice before the FSM Supreme Court is limited. FSM v. Kansou, 13 FSM Intrm. 157, 158 (Chk. 2005).

BAIL

The object in determining conditions of pretrial release is to assure the presence of the defendant at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). FSM v. Jonas (I), 1 FSM Intrm. 231a, 233 (Pon. 1982).

Where the highest prior bail was $1,500, imposition of bail in the amount of $10,000, on the basis of disputed and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. FSM v. Jonas (I), 1 FSM Intrm. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position's deep ties to Ponapean society, may be expected to appear and stand trail if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

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

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. FSM v. Etpison, 1 FSM Intrm. 370, 372 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM Intrm. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM Intrm. 62, 64 (App. 1993).

The FSM Supreme Court appellate division has no authority to review an application for release from

jail pending appeal until the court appealed from has refused release or imposed conditions. Nimwes v. FSM, 8 FSM Intrm. 297, 298-99 (App. 1998).

Because a prosecutor's assessment of probable cause is not sufficient alone to justify restraint of liberty pending trial, a preliminary hearing would be required if the defendant were to be detained pending trial or if significant restraints were to be placed on his liberty. FSM v. Wainit, 10 FSM Intrm. 618, 622 (Chk. 2002).

The government is required to make a probable cause showing at a hearing before pretrial restraints on the defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. FSM v. Wainit, 10 FSM Intrm. 618, 622 (Chk. 2002).

Because a probable cause determination is not a constitutional prerequisite to the charging decision, it is constitutionally required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. FSM v. Wainit, 10 FSM Intrm. 618, 622 (Chk. 2002).

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

Failure to return a .22 rifle to a criminal defendant does not show bias when the defendant's release conditions do not allow him to possess firearms, since if the government had returned the rifle to him, he would have been put in the position of violating his own bail bond release. That is not a position the government should be permitted to put any defendant into. FSM v. Wainit, 12 FSM Intrm. 172, 177 (Chk. 2003).

When a person is the subject of more than one criminal prosecution and has different release conditions in each case, that person must obey the most stringent of the release conditions. Likewise, if in one prosecution, the defendant is ordered held without bail, it does not matter whether in another prosecution the defendant has been released on bail or even on his own recognizance, he will be held without bail to answer the case for which he was ordered held. FSM v. Wainit, 12 FSM Intrm. 172, 178 (Chk. 2003).

Having sought the same release conditions for a defendant in two separate prosecutions does not constitute a hopeless intertwining of the two cases. Release conditions in two otherwise unrelated cases are easily separable. FSM v. Wainit, 12 FSM Intrm. 172, 178 & n.3 (Chk. 2003).

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

While denial of bail because a defendant, who was charged with driving under the influence, posed a danger to the community since he might operate a vehicle under the influence at some point in the future may possibly be correct under Kosrae Criminal Procedure Rule 46(a)(1), it contravenes Kosrae State Code Section 6.401, which permits a court to deny a defendant bail only if the defendant is intoxicated and will be offensive to the general public. Robert v. Kosrae, 12 FSM Intrm. 523, 524 (App. 2004).

Rules of procedure generally may not abridge substantive rights created by statute. Thus, to the extent Kosrae Criminal Procedure Rule 46(a)(1) purports to abridge a defendant's right to bail under Kosrae State Code Section 6.401, the Rule is likely void and of no effect. Robert v. Kosrae, 12 FSM Intrm. 523, 524 (App. 2004).

When the trial court's decision to deny a defendant bail under Kosrae Rule of Criminal Procedure 46(a)(1) even though Section 6.401 appears to have entitled him to bail may be error, given the likelihood that the defendant will prevail on the merits of his appeal, he may be released from incarceration pending the outcome of his appeal. Robert v. Kosrae, 12 FSM Intrm. 523, 524 (App. 2004).

BANKS AND BANKING

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM Intrm. 217, 221 (Pon. 1986).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 221 (Pon. 1990).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM Intrm. 121, 122 (Pon. 1991).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM Intrm. 346, 349 (Pon. 1992).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM Intrm. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term "bank" be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. Bank of the FSM v. FSM, 6 FSM Intrm. 5, 8 (Pon. 1993).

A financial institution, such as a credit union, that holds money from depositors does have an on-going

fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM Intrm. 195, 197 (Kos. S. Ct. Tr. 1995).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM Intrm. 319, 323 (App. 1995).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

The FSM Development Bank is authorized to engage in all banking functions that will assist the economic advancement of the Federated States of Micronesia. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 71 (Pon. 2001).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76-77 (Pon. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank's use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 342, 345 (Chk. 2001).

An irrevocable standby letter of credit provides the same security as a commercial letter of credit, as it provides a guarantee of payment in the event that a party does not perform according to a contract's terms. A time certificate of deposit for the amount of performance of a contract, with possession of the certificate surrendered to the state, would also provide the state with full security and evidence of funds available. Nagata v. Pohnpei, 11 FSM Intrm. 265, 272 (Pon. 2002).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers

being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 239-40 (Pon. 2003).

The stated purpose of the FSM Development Bank under 30 F.S.M.C. 104(1) is to assist in the Federated States of Micronesia's economic advancement. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 353 (Pon. 2004).

BUSINESS ORGANIZATIONS

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM Intrm. 437, 441 (Kos. 1996).

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223 & n.1 (Yap 1999).

Business entities take three general forms – a sole proprietorship, a partnership of some form, or a corporation. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

– Cooperatives

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM Intrm. 68, 70 (Pon. 1991).

A cooperative may be dissolved administratively by the FSM Registrar of Corporations and trustees appointed to wind up the cooperative's affairs. In re Kolonia Consumers Coop. Ass'n, 9 FSM Intrm. 297, 300 (Pon. 2000).

All violations of the FSM Regulations under which the FSM Registrar of Corporations may appoint trustees in dissolution for winding up an association's affairs are enjoinable. In re Kolonia Consumers Coop. Ass'n, 9 FSM Intrm. 297, 300 (Pon. 2000).

Cases involving a dissolved cooperative association may be consolidated and assigned a new docket number. In re Kolonia Consumers Coop. Ass'n, 9 FSM Intrm. 297, 300 (Pon. 2000).

– Corporations

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM Intrm. 61, 64 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 259 (Pon. 1987).

Noncitizen corporations are those which are not wholly owned by Federated States of Micronesia citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 259 (Pon. 1987).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 260 (Pon. 1987).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM Intrm. 389, 392 (Pon. 1988).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 380 (Pon. 1990).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 381 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

The de facto doctrine, which is employed by courts to treat a business as a corporation even though it has not met all legal requirements for incorporation, is of no relevance to the regulatory prohibition against the corporation engaging in business until the corporation meets minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

Regulations prescribed by the registrar of corporations have "the force and effect of law." KCCA v. FSM, 5 FSM Intrm. 375, 377 (App. 1992).

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

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 187 (Pon. 1993).

Corporate regulation is governed by national law unless or until the states undertake to establish corporate codes of their own. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 102, 105 (Pon. 1995).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223 (Yap 1999).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM Intrm. 288, 292 (Kos. 2001).

A corporation's president's statement that he bought the barge made eight years after the event and which accurately describes his activity on the corporation's behalf is insufficient to create an issue of material fact precluding summary judgment in his favor when it is consistent with his acting on the corporation's behalf and when the evidence shows that neither he nor the corporation ever took interest in the barge because the

purchase was canceled. Kosrae v. Worswick, 10 FSM Intrm. 288, 292 (Kos. 2001).

Because it is not always against a corporation's interests to dissolve, it is not necessarily true that because a party wants to dissolve a corporation her interests are adverse to the corporation's. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

If a corporation's consent to counsel's dual representation of it and of its official is required by Rule 1.7, the consent must be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. There is no requirement that all directors of the corporation must consent. An acting general manager's consent on the corporation's behalf is sufficient. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

When a legal organization (such as a corporation) is a client, the general rule is that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. Nix v. Etscheit, 10 FSM Intrm. 391, 397 (Pon. 2001).

An attorney may under certain circumstances represent a corporation at the same time as a director or officer of that corporation if the organization's consent is given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders. Nix v. Etscheit, 10 FSM Intrm. 391, 397-98 (Pon. 2001).

Under generally prevailing law, a corporation's shareholders or members may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over the corporation's management. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit, but if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board of directors. In those circumstances, Rule 1.7 governs who should represent the directors and the organization. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

When there are claims of serious misconduct leveled at the plaintiffs, who are corporate directors, and there are no misconduct claims against a defendant director, there is no conflict with the same attorneys representing the defendant director and the co-defendant corporations. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

The *alter ego* doctrine treats two entities that are nominally separate as the same where one corporation has acted unjustly or fraudulently. Specific factors which are determinative on this point include substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 611, 614 (Pon. 2002).

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

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 161 (Chk. 2002).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM Intrm. 18, 20 (Pon. 2003).

That a corporation is insolvent does not mean that it lacks the capacity to sue or be sued. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 147 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 239 (Pon. 2003).

A corporation is an artificial person created by law as the representative of persons who contribute to or become holders of shares in the property entrusted to it for a common purpose. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

– Corporations – Liability

Although many family-incorporated enterprises commingle family and business affairs, the Pohnpei Supreme Court will not make a family's personal assets available to satisfy a judicially mandated monetary award because there is still limited knowledge of business laws in Pohnpei. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 70 (Pon. S. Ct. Tr. 1986).

The C.P.A. regulations mandate that corporate directors and incorporators will be held liable for the corporation's debts if the corporation engages in business without meeting the minimum capital requirements. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

Any incorporator or director is liable for violations of the regulations governing incorporation unless he can prove an affirmative defense. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 522, 526 (Pon. 1996).

The de facto corporation defense is insufficient as a matter of law when a company has received its corporate charter. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 522, 527 (Pon. 1996).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 180 (Pon. 1997).

If a board of directors, upon learning of an officer's unauthorized transaction, does not promptly attempt

to rescind or revoke the action previously taken by the officer, the corporation is bound on the transaction on a theory of ratification. Asher v. Kosrae, 8 FSM Intrm. 443, 452 (Kos. S. Ct. Tr. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM Intrm. 443, 452 (Kos. S. Ct. Tr. 1998).

A corporation's directors may ratify any unauthorized act or contract. A corporation's ratification need not be manifested by any vote or formal resolution of the board of directors. An implied ratification can arise if the corporate principal, with full knowledge and recognition of the material facts, exhibits conduct demonstrating an adoption and recognition of the contract as binding, such as acting in the contract's furtherance. It is well established that if a corporation, with knowledge of its officer's unauthorized contract and the material facts concerning it, receives and retains the benefits resulting from the transaction, it thereby ratifies the transaction. A corporation may not accept a transaction's benefit and at the same time attempt to escape its consequences on the ground that the transaction was not authorized. Asher v. Kosrae, 8 FSM Intrm. 443, 452-53 (Kos. S. Ct. Tr. 1998).

When the board of directors did not act promptly to rescind or revoke the agreement made by its general manager; when all its subsequent actions have been consistent with the agreement's terms; when it had knowledge of the unauthorized contract and of the material facts concerning it; when it received, retained, and continues to receive and retain the benefits resulting from the transaction; it is clear that the board of directors has ratified the agreement. The corporation may not accept the agreement's benefits and at the same time escape its liabilities. Asher v. Kosrae, 8 FSM Intrm. 443, 453 (Kos. S. Ct. Tr. 1998).

Under ordinary circumstances, a parent corporation will not be held liable for the obligations of its subsidiary. Senda v. Semes, 8 FSM Intrm. 484, 505 (Pon. 1998).

The mere fact of a loan to a subsidiary is not sufficient to confer liability for the loan on the parent. Senda v. Semes, 8 FSM Intrm. 484, 506 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM Intrm. 484, 506 (Pon. 1998).

Even if a corporate official did not have the authority to execute a lease, his execution of the lease was ratified by the corporation's long acceptance of the lease's benefits. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 158 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 160 (Chk. 2002).

– Corporations – Stock and Stockholders

Par value and stated value of stock are arbitrarily chosen figures which often bear no relationship to the price paid. These figures may be considerably less than the actual value of the stock and have little significance to creditors or others seeking to determine the financial strength of a corporation in the FSM. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 51 (Pon. 1985).

In the Federated States of Micronesia, distribution of dividends in cash or in property may be made only

from earned surplus. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

The $1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than $1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. FSM v. Ponape Builders Constr. Inc., 2 FSM Intrm. 48, 52 (Pon. 1985).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. Sets v. Island Hardware, 3 FSM Intrm. 365, 368 (Pon. 1988).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 159 (Pon. 1989).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 161 (Pon. 1989).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

The real party in interest in a civil action is the party who possesses the substantive right to be enforced. The mere fact that a shareholder may substantially benefit from a monetary recovery by a corporation does not make the shareholder a real party in interest entitled to seek monetary recovery in a civil action. A claim of such a shareholder will be dismissed. Kyowa Shipping Co. v. Wade, 7 FSM Intrm. 93, 96-97 (Pon. 1995).

A case that is not a suit by the corporations' shareholders or members to compel the corporations' directors to perform their legal obligations in the supervision of the organization is not a derivative action. Nix v. Etscheit, 10 FSM Intrm. 391, 398 (Pon. 2001).

– Joint Enterprises

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM Intrm.

107, 110 (Pon. 1985).

A project that has a number of acts or objectives for a limited period of time and is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise, is a joint enterprise. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 65 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 67 (Pon. S. Ct. Tr. 1986).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM Intrm. 1, 2 (Truk 1989).

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223 (Yap 1999).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

– Partnership

A joint venture is defined as a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when a any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM Intrm. 220, 223-24 (Yap 1999).

The principal duty of an attorney appointed as general counsel for a partnership is to the partnership itself, not to the general or limited partners as individuals. In re Nomun Weito Interim Election, 11 FSM Intrm. 458, 460 (Chk. S. Ct. App. 2003).

That a business venture is a partnership of some form, rather than a corporation, is indicated when there is no evidence which would imply or prove the creation of a corporate entity – no evidence of a board of directors, of registration with a government as a corporation, of officers, or by-laws which – would indicate a corporate existence. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

Partnerships take various forms. A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for profit. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

A partnership is an association of two or more persons to carry on as co-owners a business for profit. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

Partners are those persons who contribute either property or money to carry on a joint business for their common benefit, and who own and share its profits in certain proportions. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

A limited partnership is a legal fiction usually created by statute. Thus in a business arrangement based upon an oral agreement, the business is a general partnership. In re Estate of Setik, 12 FSM Intrm. 423, 430 (Chk. S. Ct. Tr. 2004).

A partnership created by oral agreement is considered a "partnership at will," with no definite term, which may be terminated at any time by the express will of any one partner. In re Estate of Setik, 12 FSM Intrm. 423, 430 n.16 (Chk. S. Ct. Tr. 2004).

Designating one general partner as the managing partner does not destroy the unity of interest necessary for the creation of a partnership. In re Estate of Setik, 12 FSM Intrm. 423, 430 (Chk. S. Ct. Tr. 2004).

Once it is established that a partnership exists, there is a presumption that the partnership continues until the contrary is shown, or until it is dissolved and its affairs are wound up, or until knowledge of its termination comes to persons dealing with the partnership. In re Estate of Setik, 12 FSM Intrm. 423, 430 (Chk. S. Ct. Tr. 2004).

When the primary force behind the growth of a business over the years was the decedent, and that another's role was as a passive investor, it is reasonable to conclude that the decedent's share of the partnership exceeded his paid in capital share and included a significant interest arising out of his creation of and his services to the partnership. Thus, to the extent that the decedent's interest included substantial services to the partnership, it is not unreasonable to conclude that the other had a partnership interest significantly less than the actual share of his financial contribution. In re Estate of Setik, 12 FSM Intrm. 423, 430 (Chk. S. Ct. Tr. 2004).

– Sole Proprietorship

A sole proprietorship differs from a corporation. It does not have the advantages of a corporation, such as a corporation's separate capacity to hold property, to contract, to sue and be sued, and to act as a distinct legal entity. A sole proprietor does not have the protection of the corporate veil by which the corporation's owners, the shareholders, are exempt from liability for the corporation's acts. A sole proprietorship has no legal existence separate from that of its owner. Its acts and liabilities are those of its owner. Its owner's acts and liabilities are those of the sole proprietorship. FSM v. Webster George & Co., 7 FSM Intrm. 437, 441 (Kos. 1996).

A sole proprietorship cannot be charged as a principal if there are no acts or omissions committed by its owner, but it can be found culpable as an accessory if it is specifically charged with vicarious liability for the acts of another. FSM v. Webster George & Co., 7 FSM Intrm. 437, 441 (Kos. 1996).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 74 (Pon. 2001).

The designation "d/b/a" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name. Jackson v. Pacific Pattern, Inc., 12 FSM Intrm. 18, 20 (Pon. 2003).

When a corporation and its predecessor sole proprietorship are identical as a practical matter because the business remained essentially unchanged as a result of incorporation, both the predecessor sole proprietorship and the successor corporation are jointly and severally liable for the sole proprietorship's debt. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 239 (Pon. 2003).

If more than one person has an interest, of some form and extent, in a business entity, the entity cannot

be considered a "sole" proprietorship. In re Estate of Setik, 12 FSM Intrm. 423, 429 (Chk. S. Ct. Tr. 2004).

CHOICE OF LAW

Where the plaintiff is a Pohnpei resident, one of the defendants, a party to the contract at issue, is a corporation having its principal place of business in Pohnpei, and where the contract at issue governs work to be conducted in Pohnpei, and the injury which has brought the clause under consideration occurred in Pohnpei, the indemnification clause should be interpreted, and the issues of tort liability determined, in accordance with the law of Pohnpei. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 137 (Pon. 1985).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there, of course, has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

An FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 9 (Pon. 1989).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM Intrm. 48, 49-50 (Pon. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

State law is to be applied in domestic relations cases. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

The FSM Supreme Court should apply FSM law to determine a claim brought in an FSM court pursuant to FSM statutory authorization by an FSM citizen asserting that FSM officials failed to fulfill the commitments of the FSM national government, and this is so even when key events at issue happened outside of the FSM. Leeruw v. FSM, 4 FSM Intrm. 350, 357 (Yap 1990).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM Intrm. 350, 365 (Yap 1990).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337 (Pon. 1992).

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a

diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455 (Chk. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 601 (Pon. 1994).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 64-65 (Chk. 1997).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 251-52 (Pon. 1998).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 253 (Pon. 1998).

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 294-95 (Pon. 1998).

The national courts of the FSM have frequently been obliged to decide state law issues without the benefit of prior state court decisions. In such instances, the national courts strive to apply the law in the same way the highest state court would. Subsequently, should the state's highest court decide the issue differently in a different case, then prospectively that case will serve as controlling precedent for the national court on that state law issue. Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 22 (Yap 1999).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 158 (App. 1999).

The FSM Supreme Court's function and goal in diversity cases where state law provides the rule of decision is to apply the law the same way the highest state court would, and that if there is a decision of the highest state court it is controlling and the FSM Supreme Court will apply it. But if there is no such state court decision the FSM Supreme Court must still exercise its jurisdiction and try to decide the case according to how it thinks the highest state court would. In the future, the highest state court could decide the issue differently and future decisions of the FSM Supreme Court would then apply that decision. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 158 (App. 1999).

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM Intrm. 244, 253-54 (Pon. 2001).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM Intrm. 536,

537-38 (Chk. S. Ct. Tr. 2002).

When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 635 (Pon. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM Intrm. 630, 641 (Pon. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM Intrm. 75, 77 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM Intrm. 187, 189 (Chk. 2003).

CITIZENSHIP

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM Intrm. 1, 6 (Pon. 1985).

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

The Citizenship and Naturalization Act places primary responsibility for administrative implementation upon the President, and contemplates that the Executive Branch, not the Judiciary, normally will determine and certify citizenship. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

Where there exists an actual controversy involving a concrete threat to citizenship rights and interests, the FSM Supreme Court could be constitutionally required to determine whether a person is or is not a citizen. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

Courts in the United States have ruled on citizenship status where that status determines the propriety of official administrative action and administrative remedies have been exhausted. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

Until 7 F.S.M.C. 204 goes into effect, it may be appropriate to take a liberal view in determining when a court ruling on citizenship status may be required to prevent injustice or to permit an individual to proceed with his own business or personal affairs. In re Sproat, 2 FSM Intrm. 1, 8 (Pon. 1985).

CIVIL PROCEDURE

Except in the most extraordinary circumstances, a court should not accept one party's unsupported representations that another party to the litigation has no further interest in the case. In re Nahnsen, 1 FSM Intrm. 97, 100 (Pon. 1982).

FSM Civil Rule 3 confirms that the filing of a complaint is the essential first step for instituting civil litigation. The Rules of Civil Procedure specify no other method for a party to obtain judicial action from the court in civil litigation. Koike v. Ponape Rock Products Co., 1 FSM Intrm. 496, 500 (Pon. 1984).

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM Intrm. 14, 16 (Pon. S. Ct. Tr. 1985).

Procedural matters in litigation before the FSM Supreme Court are governed by the FSM Rules of Civil Procedure and national statutes, rather than by state law. Salik v. U Corp., 4 FSM Intrm. 48, 49-50 (Pon. 1989).

Courts have inherent power, and an obligation, to monitor the conduct of counsel and to enforce compliance with procedural rules. Leeruw v. Yap, 4 FSM Intrm. 145, 150 (Yap 1989).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

Time requirements set by court rules are more subject to relaxation than are those established by statute. Charley v. Cornelius, 5 FSM Intrm. 316, 318 (Kos. S. Ct. Tr. 1992).

When a defendant cites certain defenses, but makes no argument as to how they apply and their application is not self-evident, the court may decline to speculate as to how they apply. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 119 (Pon. 1993).

When a party believes that error has occurred in a trial, its remedy is by way of appeal, not by commencing a second action. Maruwa Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM Intrm. 238, 240 (Pon. 1993).

Where a party at trial claims surprise, and the judge offers that party a chance to cure any prejudice this might have caused and they make the tactical choice to decline the opportunity, it is a tactical choice the party must live with and is not a basis for reversal. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351-52 (App. 1994).

A court will not limit its review of the validity of a claim for relief to the arguments presented by the parties where the claim raises public policy concerns, and the defendant is a pro se litigant. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Rule has not previously been construed by the FSM Supreme Court it may look to the U.S. federal courts for guidance in interpreting the rule. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 444 (App. 1994).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

When a defendant's answer has placed all the plaintiff's allegations into issue and even though the defendant did not appear at trial the plaintiff still has the burden of proving his case by a preponderance of evidence. Kaminaga v. Chuuk, 7 FSM Intrm. 272, 274 (Chk. S. Ct. Tr. 1995).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM Intrm. 507, 509-10 (Chk. S. Ct. App. 1996).

A showing of excusable neglect is required to grant a request for enlargement of time made after the time allowed had elapsed. Counsel's failure to make a note to remind him of the answer's due date and his attention to other matters, both personal and professional, does not establish excusable neglect. Bank of

Guam v. Ismael, 8 FSM Intrm. 197, 198 (Pon. 1997).

A defendant's motion to enlarge time to file an answer may be granted, even though excusable neglect has not been shown, when it would be conducive to a speedy and inexpensive determination of the action, the delay has not been long, and no prejudice to the plaintiff is apparent. Bank of Guam v. Ismael, 8 FSM Intrm. 197, 198 (Pon. 1997).

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM Intrm. 198, 201 (Kos. S. Ct. Tr. 1997).

When considering a motion to modify its orders, particularly in a long-pending case, a court, in furthering the interest of finality, looks to what has been done, not to what might have been done. Youngstrom v. Phillip, 8 FSM Intrm. 198, 202 (Kos. S. Ct. Tr. 1997).

Under Civil Rule 70, the court may direct an act to be done at the cost of a disobedient party by some other person appointed by the court. Louis v. Kutta, 8 FSM Intrm. 228, 230 (Chk. 1998).

Failure to file any response to an opponent's submission and failure to file a motion for enlargement of time before or after a court-ordered deadline constitutes consent to the content of the opponent's submission. Langu v. Kosrae, 8 FSM Intrm. 455, 459 (Kos. S. Ct. Tr. 1998).

When an FSM court rule, such as General Court Order 1992-2 governing removal, has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Porwek v. American Int'l Co. Micronesia, 8 FSM Intrm. 463, 466 n.1 (Chk. 1998).

Any decision made before a final judgment adjudicating all parties' claims and rights is subject to revision. Porwek v. American Int'l Co. Micronesia, 8 FSM Intrm. 463, 466 (Chk. 1998).

The FSM Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 477 (Pon. 1998).

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. Abraham v. Kosrae, 9 FSM Intrm. 57, 59 (Kos. S. Ct. Tr. 1999).

When an FSM Rule of Civil Procedure is nearly identical to a U.S. Federal Rule of Civil Procedure, the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 87 n.2 (App. 1999).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM Intrm. 99, 100 (Pon. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM Intrm. 148, 149 (Chk. S. Ct. Tr. 1999).

For cause shown, the court may, within its discretion, order the enlargement of a period of time, but when the movant does not specify why it needs additional time, no cause has been shown. Bank of Hawaii v. Helgenberger, 9 FSM Intrm. 260, 262 (Pon. 1999).

The Kosrae Rules of Civil Procedure shall be construed to secure the just, speedy, and inexpensive determination of every action. Palik v. Henry, 9 FSM Intrm. 267, 269 (Kos. S. Ct. Tr. 1999).

When the FSM moves for a stay of a civil case to preserve the defendants' rights in a related criminal

case and the defendants oppose the motion and claim that they would suffer substantial prejudice from a delayed prosecution of the civil action and when the FSM had the prosecutorial discretion to file both the civil and criminal cases simultaneously, although there is nothing in the statute requiring that, the motion to stay will be denied and, in the absence of good cause, the civil case will go forward. FSM v. Zhong Yuan Fishery Co., 9 FSM Intrm. 351, 353 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 373-74 (Kos. 2000).

Rules of court properly promulgated, and not exceeding the limitation of the court's rulemaking power, have the force of law. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 371 (Kos. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure and the FSM Supreme Court has not previously construed the FSM Rule, it may look to U.S. federal practice for guidance in interpreting the rule. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 377 n.1 (Chk. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Rule of Civil Procedure the FSM Supreme Court may look to the U.S. federal courts for guidance in interpreting the rule. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 413 n.3 (App. 2000).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM Intrm. 496, 499 (Chk. S. Ct. Tr. 1999).

A party cannot simply leave the jurisdiction to avoid a lawsuit. A party aware she has litigation pending against her, should, prior to leaving the court's jurisdiction, provide her attorney with a means to contact her. A party cannot expect a court to wait and see if she will return before rendering judgment. Harden v. Primo, 9 FSM Intrm. 571, 574 (Pon. 2000).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Supreme Court has not previously construed the FSM Rule, it may look to the U.S. federal practice for guidance in interpreting the rule. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 n.1 (Chk. 2001).

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

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM Intrm. 105, 106 (Chk. 2001).

When the FSM Supreme Court has not already construed an FSM court rule which is similar or nearly identical to a U.S. rule, it may look to U.S. practice for guidance. Medabalmi v. Island Imports Co., 10 FSM Intrm. 217, 219 n.1 (Chk. 2001).

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Rule has not previously been construed, the FSM Supreme Court may look to U.S. federal practice for guidance. Moses v. Oyang Corp., 10 FSM Intrm. 273, 275 n.1 (Chk. 2001).

The Professional Conduct Rules are designed to provide guidance to lawyers and to provide a structure

for regulating conduct through disciplinary agencies, and are not designed to be a basis for civil liability. The Rules' purpose can be subverted when they are invoked by opposing parties as procedural weapons. Nix v. Etscheit, 10 FSM Intrm. 391, 395 (Pon. 2001).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

While a Rule 68(b) hearing to give the court the benefit of evidence or hearing testimony concerning the claim's value may be both highly desirable and very useful, it is not an absolute necessity because the court may, on its own motion and in its discretion, order that a hearing be held. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

When the word "may" is used in Chuuk Civil Rule 68(b) and the rule adds even further qualifiers ("a hearing be held if in the discretion of the court") that reveal the discretionary nature of the hearing, the context is clear – the word "may" in Rule 68(b) denotes discretion. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

When the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

A defendant who has failed to raise any affirmative defenses in his answer, or to amend his answer to add any, or to assert at trial any counterclaims or crossclaims, or third party claims, has waived and lost his right to assert at trial affirmative defenses and to assert any counterclaims or crossclaims, or third party claims. Shrew v. Killin, 10 FSM Intrm. 672, 674 (Kos. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM Intrm. 36, 40-41 (Chk. S. Ct. Tr. 2002).

When the FSM Supreme Court has not construed an FSM court rule which is similar or identical to a U.S. rule, it may look to U.S. practice for guidance. Ifenuk v. FSM Telecomm. Corp., 11 FSM Intrm. 201, 203 n.2 (Chk. 2002).

When an FSM court has not previously construed a Civil Procedure Rule that is similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the FSM rule. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM Intrm. 319, 321 n.1 (Pon. 2003).

Although the court must first look to sources of law in the FSM rather than begin with a review of cases decided by other courts, when an FSM court has not previously construed FSM civil procedure rules which are identical or similar to U.S. counterparts, the court may look to U.S. sources for guidance in interpreting the rules. Beal Bank S.S.B. v. Maras, 11 FSM Intrm. 351, 353 n.1 (Chk. 2003).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal

opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM Intrm. 502, 505-06 (App. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM Civil Rule which is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 518 n.2 (Chk. 2003).

Although the FSM Supreme Court must first look to sources of law rather than begin with a review of cases decided by other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, the court may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM Intrm. 520, 527-28 n.1 (Chk. 2003).

When the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. In re Engichy, 11 FSM Intrm. 555, 557 n.1 (Chk. 2003).

No hearing on a name change petition will normally be required, unless objections to the petition are properly filed with the court within the time period required. If objections are filed, the court will schedule a hearing at the earliest possible opportunity, and the Clerk of the Court shall give notice of the hearing by the best means available to apprize the objectors of the hearing's date and time. In the absence of objection, and upon confirmation that the name change petition contains all necessary information, the court will grant the petition without hearing, and will give notice to the petitioner that the petition has been granted. In re Suda, 11 FSM Intrm. 564, 567 (Chk. S. Ct. Tr. 2003).

Pleadings, discovery, summary judgment motions, and trial are all prejudgment procedures and are thus inapplicable to an entirely a post-judgment matter. In re Engichy, 12 FSM Intrm. 58, 66 (Chk. 2003).

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

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

Although the court must first look to FSM sources of law rather than begin with a review of cases from other courts, when the court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S. rule, it may look to U.S. sources for guidance in interpreting the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM Intrm. 192, 196 n.2 (Yap 2003).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 348, 353 (Pon. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM Intrm. 385, 387 (Chk. 2004).

A preference exists for resolution of matters on the merits and that, within the bounds of reason, and except when a specific rule, law, or a party's or his counsel's conduct directs a different result, this preference should be given effect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM Intrm. 492, 497 (Chk. 2004).

Although the court must first look to FSM sources of law rather than begin with a review of other courts' cases, when a court has not previously construed an FSM civil procedure rule which is identical or similar to a U.S.

counterpart, it may look to U.S. sources for guidance in interpreting the rule. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 7 n.2 (Pon. 2004).

While a court may, in the interests of the orderly administration of justice, accommodate, if possible, counsel's reasonable requests and travel plans, such notices are not binding on the courts. Counsel must accept the fact that things may arise that will require their attention at times when they would rather not be bothered. Goya v. Ramp, 13 FSM Intrm. 100, 107 n.8 (App. 2005).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 125 (Chk. 2005).