Congress membership).

Other separation of powers concerns are also apparent. If a Presidential pardon automatically entitled the person pardoned to an expungement of his criminal record, then the executive branch would have the power to interfere with the record-keeping of another co-equal branch of government (the judicial branch) while also preventing still another co-equal branch of government (Congress) from access to the judicial branch's records that would assist it in its constitutional duty to be the sole judge of the qualification of its members.

Lastly, whether Fritz's records are expunged cannot turn on the fact that he pled not guilty and later appealed while Innocenti pled guilty. Fritz, like Innocenti, has had his civil rights restored. And like Innocenti, he seeks expungement of his criminal record as an aid to regaining the ability to travel freely in United States territory and to be able to, if the electorate is agreeable, seek a Congress seat.

IV.

The court, following the Judicial Guidance Clause's mandate that its decisions be consistent with the Constitution, therefore concludes that it can order an expungement of criminal records in a case such as this one, only if Congress grants it the authority to do so. If Congress should ever enact such legislation, Fritz is free to renew his motion for expungement. Since no FSM statute currently authorizes the court to expunge the criminal records of a person pardoned by the President, Fritz's motion must be denied.

* * * *

FSM SUPREME COURT TRIAL DIVISION

ANGELINE NETH and FRANCINE POLL, Plaintiffs, vs. MARCELO PETERSON, in his official capacity as Governor, Pohnpei Government, CHRISTINA ELNEI, in her official capacity as the Acting Director of the Department of Treasury, Pohnpei Government, MALPIHNA NELPER, in her official capacity as the Chief of Personnel, Labor and Manpower Development, and POHNPEI GOVERNMENT, Defendants.	)	CIVIL ACTION NO. 2015-007

ORDER SETTING ASIDE ENTRY OF DEFAULT

Ready E. Johnny
Associate Justice

Decided: September 7, 2016

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
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For the Defendants: Monaliza Abello-Pangelinan, Esq.
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HEADNOTES

Civil Procedure – Service

All filings must be served on all parties unless the party is in default and the default is for a failure to ever appear at any stage of the proceeding, and this means a failure to ever appear, not just a failure to appear at a particular stage of the proceedings or a failure to file a responsive motion. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

Civil Procedure – Filings; Civil Procedure – Service

All filings must be served upon each of the parties, but no service need be made on the parties in default for failure to appear except for pleadings asserting new or additional claims for relief against them. Neth v. Peterson, 20 FSM R. 601, 603 n.1 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside; Civil Procedure – Service

When the defendants would have been in default only for their failure to file an answer, not from a failure to ever appear (since they had earlier filed a motion to dismiss), service on them of a request for an entry of default was required, and when it was not made, the default that was entered can be set aside on this ground alone. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside

In determining whether good cause to set aside an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

Civil Procedure – Default and Default Judgments – Entry of Default – Setting Aside; Civil Procedure – Service

When the motion to set aside was prompt, when the default does not appear to be willful, when the plaintiffs, in their opposition, do not argue that setting aside the default would prejudice them, and when, although the defendants failed to assert a meritorious defense in their motion, they did assert affirmative defenses in their answer that would meet that requirement, the defendants' motion to set aside may be granted. Neth v. Peterson, 20 FSM R. 601, 603 (Pon. 2016).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This comes before the court on the defendants' Motion to Set Aside Entry of Default; Motion for Leave, filed August 11, 2016; the plaintiffs' Motion to Strike Answer, filed August 23, 2016; and the plaintiffs' Opposition to Motion to Set Aside Default, filed August 24, 2016. The defendants' motion to set aside is granted and the plaintiffs' motion to strike is denied for the reasons that follow.

The clerk entered the defendants' default on July 28, 2016. The defendants then moved to set aside that default, reciting the chronic shortage of staff and urgent deadlines within the state government and other agencies had left them unable to answer. The defendants also assert that they were never served with the plaintiffs' motion for entry of default. The plaintiffs oppose on the ground that the defendants have not shown excusable neglect and that the defendants were not served because service is not required on parties in default for failure to appear.

The court must reject the plaintiffs' contention that the defendants were in default for the failure to appear. The defendants have previously appeared in this case. They appeared and defended against the plaintiffs' complaint by filing, on May 2, 2015, a responsive motion to dismiss. Since the defendants had appeared, the plaintiffs were thus required to serve their motion for entry of default on the defendants.

All filings must be served on all parties unless the party is in default, FSM Civ. R. 5(a), and the default is for a failure to ever appear at any stage of the proceeding.[1] Bank of the FSM v. Bergen, 7 FSM R. 595, 596 (Pon. 1996) (defendants had appeared at hearing so service necessary), *rev'd on other grounds sub nom.*, In re Sanction of Michelsen, 8 FSM R. 108 (App. 1997). "This means a failure ever to appear, not just a failure to appear at a particular stage of the proceedings or a failure to file a responsive motion." Bergen, 7 FSM R. at 596. In this case, the defendants would have been in default only for the failure to file an answer, not from failure to ever appear. Service on them was required. It was not made. The default can be set aside on this ground alone.

In determining whether good cause to set aside an entry of default exists, a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 306, 308 (Pon. 2016). A court may also examine such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the motion's timing. *Id.*

The motion's timing was prompt. The default does not appear to be willful, and the plaintiffs, in their opposition, do not argue that setting aside the default would prejudice them. The defendants failed to assert a meritorious defense in their motion. They did, however, assert affirmative defenses in their answer that would meet that requirement.

NOW THEREFORE IT IS HEREBY ORDERED that defendants' motion is granted and that the July 28, 2016 Entry of Default is set aside. Accordingly, the plaintiffs' Motion to Strike Answer is denied.

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[1] All filings "shall be served upon each of the parties. No service need[s] to be made on the parties in default for failure to appear except [for] pleadings asserting new or additional claims for relief against them . . . ." FSM Civ. R. 5(a).

AND, an answer having been filed, IT IS FURTHER ORDERED that the following schedule is set: 1) the parties shall make all their discovery requests by November 15, 2016; 2) all discovery shall be completed by December 20, 2016; and 3) all pretrial motions shall be filed by January 31, 2016.

* * * *

CHUUK STATE SUPREME COURT TRIAL DIVISION

IN THE MATTER OF THE ESTATE OF RAYMOND SETIK, Deceased, MARIANNE SETIK, Petitioner.	)	CSSC PROBATE NOS. 48-97; 50-97; and 4-98

ORDER DENYING FSMDB'S MOTION TO RECUSE

Jayson Robert
Associate Justice

Hearing: August 25, 2016
Decided: September 9, 2016

APPEARANCES:

For the Petitioner: Yoslyn Sigrah, Esq.
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For the Intervenor: (FSM Dev. Bank) Nora E. Sigrah, Esq.
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HEADNOTES

Courts – Recusal

The applicable recusal statute requires that a Supreme Court justice disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).

Courts – Recusal – Procedure

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. For purposes of the referral procedure set forth in section 22(5) of the Chuuk Judiciary Act, a motion to recuse and one to disqualify are one and the same. In re Estate of Setik, 20 FSM R. 604, 606 (Chk. S. Ct. Tr. 2016).