



NEWSLETTER

Volume I Issue 4

March 31, 2009

Seal of the Supreme Court of the FSM

- The seal above represents many things of the ways of the Micronesian people. The "V" sign in the center of it is a star point which signifies "star path navigators" a traditional and contemporary symbol common to all four FSM Island States; and, it also represents a mountain and ocean waves.

Inside this issue:

| | |
|------------------------|---|
| PJC Meeting | 2 |
| 2009 Law Day | 2 |
| Congressman Eni | 3 |
| New Bar Members | 3 |
| Passing of Sir Mari | 4 |
| Passing of Hon. Samson | 4 |
| Student Visit | 4 |
| Appeal Cases | 5 |
| CAN YOU ID? | 5 |
| ABOUT THE LAW | 6 |

Decision Making Workshop by Pacific Judicial Development Program

Kolonia, Pohnpei. March 20, 2009

The FSM Supreme Court in coordination and collaboration with the Pacific Judicial Development Program (PJDP), conducted a training workshop for judges of the National, State and Municipal Courts on an advanced course of Decision Formulation and Judgment Writing Level II. This training was a follow up of the same subject offered in Pohnpei in June 2007 as Level I. The course was taught and facilitated by Honorable Enoka Puni, a retired judge and a faculty of PJDP.

The training was conducted at Pohnpei Supreme Court from March 16-20, 2009. The participants were from Yap State Court, Chuuk State Supreme Court, Weno Municipal Court, Pohnpei Supreme Court, Pohnpei Court of Land Tenure, Madolenihmw Mu-

nicipal Court, U Municipal Court, Kitti Municipal Court, Sokehs Municipal Court, Nett District Court, Kolonia Town Court, Kosrae State and Land Court and FSM Supreme Court.

There were 24 participants registered on the first day and 19 of them fully participated, completed and were awarded certificates at the end of the workshop. The training focus was on the structure and rationale of writing court decisions and judgments. The exercise emphasized the importance for all judges to understand his/her jurisdiction, constitution and laws that govern penalties and sentencing in their given jurisdictions. Court decisions are written in accordance with the constitution and statutory authority allowed in a given jurisdiction and never by gut or personal feelings.

Many participants valued this training as an important opportunity that helped them to better understand their roles as judges. Most importantly, they learned the structure that would greatly assist and guide them to write decisions that are well organized, well reasoned and easy to understand.



Front l-r : CJ Hadley (Madol.), CC Keller (FSM), CG Shah(Yap), AJ Johnny(Pni.)
2nd row l-r : PTJ Falcam (U), AJ Loney (Sokehs), PJ Roby (Weno), Hon. Puni
3rd row l-r : AJ Ligoher (Pni. Land Ct.), AJ Yinug(FSM), AJ Allen (Kosrae), PJ Yamaguchi (Pni Land Ct.)
Back row l-r: AJ Aisek (Chuuk), CG Warren (Chuuk), CJ Noket (Chuuk), CJ Aliksa (Kosrae), AJ Perez(Madol.)
Missing : CJ Henry (Kolonia), CJ Ekiek (Nett), AJ R. Johnny (FSM),

Pacific Judicial Council (PJC) annual Executive Meeting

Koror, Palau. February 05, 2009

The Pacific Judicial Council (PJC) held its annual Executive Meeting in Koror, Palau at the Palau Pacific Resort Hotel during the first week of February 2009. All Chief Justices and Presiding Judges of the PJC member jurisdictions (American Samoa, CNMI, Guam, Palau, RMI, FSM and all 4 State Courts of the FSM) were present except Pohnpei Supreme Court. Also present were Honorable Mary Schroeder and Honorable Clifford Wallace, former Chief Judges of the US 9th Circuit Court of Appeals and members of Pacific Island Committee of the 9th Cir-

cuit.

The Executive Meeting was followed by a PJC Education Committee meeting and a judicial training workshop.

The outcomes of the Executive Meeting and the Education Committee Meeting confirmed the 4th Court Administrators Training to be held in Yap in June, 2009 and PJC biannual conference slated for October 25, 2009 in Saipan, CNMI.

The subject of the training was on Court Executive Team Development focusing on management model of leadership collaboration. The workshop was coordinated by Hon. Clifford Wallace and facilitated by Dr. Dale Lefever, an organizational development consultant and trainer. The subject matter was designed to enhance the administrative effectiveness and efficiency of the court through promotion of a team approach to management between the Chief Justices and Directors/Administrators. Many of the FSM and State Judiciaries participants cherished the valuable opportunity to learn new leadership skills and gain new perspectives and insights that can help them improve their working relations as members of Court Leadership Team. Overall the training was a great success.

The Palau Supreme Court did a marvelous job in hosting this PJC activity. Some of the participants called on the new President of the republic at the end of the workshop.



Participants to the 2009 PJC Executive Meeting and Training, Koror Palau

2009 FSM National Law Day

Palikir, Pohnpei

The FSM National Law Day is one of the court's annually sponsored programs that features high school students representing their states of Chuuk, Kosrae, Pohnpei and Yap in debates on issues of national significance. The purpose of the Law Day when it was first organized and held in 1991 was to involve high school students and the general public in discussion of issues important to the Federated States of Micronesia as a developing nation. Law Day has become an important activity of the court. Since its inception on July 12, 1991, over 120 high School students from the four states have already been involved in the event and over \$120,000 in scholarship funds have been issued. For the past seventeen years, the Federated States of Micronesia, through the Supreme Court, has been providing the opportunity to high school students to participate in the development of our nation through debates on issues important to the FSM, and the same opportunity to the general public to be involved in these discussions as well.

A coordinating committee is appointed each year to organize the law day. The committee selected its chairman after the appointment and decided on the topic of the debate. This year's topic is:

"Be it resolved that in the interest of improving the health of the citizens and residents of the Federated States of Micronesia, the importation of the following items into the FSM shall be prohibited by law:

Turkey Tail

Canned Corn Beef

Spam

Instant Ramen Noodle

Such other products as may be determined by statute or regulation to be unhealthful."

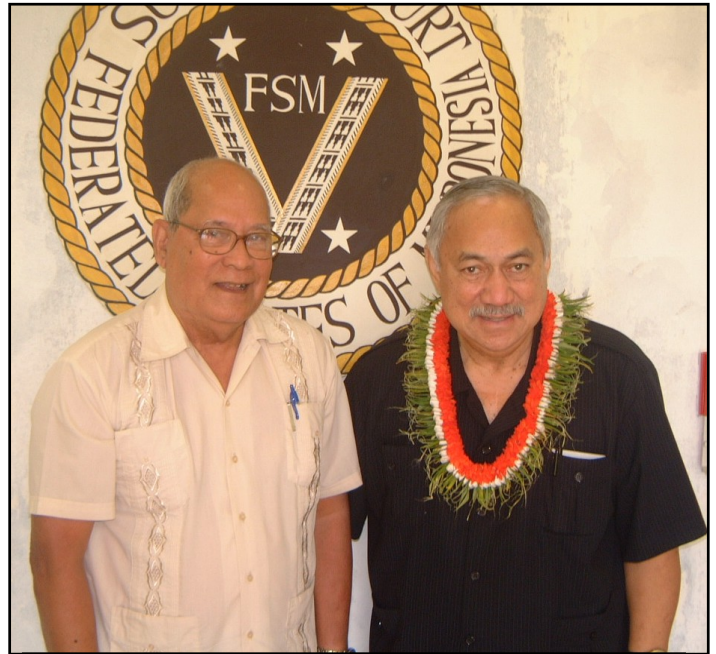
Each year, the court pays to send the student debaters to the venue of the debates and provides financial assistance for their initial post-secondary education to attend colleges and universities of their choice including the College of Micronesia-FSM. The scholarship assistance money is given to the student debaters upon their submission of letters of acceptance to the colleges or universities of their choice to the court.

The venue for the 2009 FSM National Law Day is Chuuk State. Since July 12 falls on a Sunday this year, the committee decided to move the event to Monday July 13, 2009. The ceremonies and debates will commence at 9:00 a.m., Chuuk time, and will be broadcast live throughout the Federated States of Micronesia on Monday, July 13, 2009 from the State of Chuuk.

Congressman Eni visits the Court

Palikir, Pohnpei,

On March 05, 2009 at 10:00 am., Honorable Eni. F.H. Faleomavaega, American Samoa Delegate to the US Congress paid a courtesy call on FSM Chief Justice, Andon L. Amaraich. Congressman Faleomavaega visited the FSM as the Chairman of Foreign Affairs Sub Committee on Asia Pacific and Global Environment. His brief meeting with the Chief Justice was warm and pleasant. The two had met each other about twenty years ago. The Congressman was interested to know statistics of how many lawyers there are in the FSM and how he could help to entice students to pursue their education in legal career in the US. In responses to the Congressman's inquiry, Chief Justice Amaraich informed him about the problem of the division of the Compact II Judicial Training Fund between FSM and RMI. The division was done by the Department of the Interior based on general population instead of number of judges and court staff of each country. The Congressman commented by stating that in Washington D.C. it is always the rule to divide or distribute funds based on population. Chief Justice Amaraich commented that while such a rule may be sensible and reasonable for programs and services that involve general populations, the Chief Justice pointed out that the policy, on the other hand, exacted an inequitable situation for FSM. Since that fund targets a specific group or specific audience, the sensibility and the reasonableness of the rule become inequitable. To further compound the situation, FSM has nine different languages while RMI has only one, FSM is about three times the size of RMI so it actually costs more money to train FSM judges and court staff that speak nine different languages and live thousand of miles apart, under different constitutions and must travel by plane to different locations to attend train-



l-r: Chief Justice Amaraich, Congressman Eni

ings.

However, since this was the first time to learn of this issue, Congressman Faleomavaega said that he would look into it when he returns to Washington, DC. He encouraged Chief Justice Amaraich to contact him directly anytime he has an issue or needs something for the FSM. His subcommittee has broad oversight on issues and affairs of the Asia Pacific region and as an islander from the Pacific his door is always open to listen and assist the island governments the best he can in Washington DC.

SPECIAL PROCEEDING

On April 17, 2009 at 09:30 a.m. a special proceeding was held for two Attorneys who took their oath as new members of the FSM Bar. The proceeding was held at the FSM Supreme Court in Weno, Chuuk State. Mr. Larry Wentworth, staff attorney of the FSM Supreme Court moved for the admission of Mr. Aaron L. Warren and Mr. Joses Gallen Acting Attorney General of Chuuk State moved for the admission of Mr. William E. Minkley.

The Honorable Ready E. Johnny Associate Justice of the FSM Supreme Court presided over the Special Proceeding. He administered the oath to both Mr. Aaron L. Warren and Mr. William Minkley.

Mr. Aaron L. Warren graduated from the University of Michigan, Ann Arbor in 1994 where received his B.A. Degree in English Literature. In 2000, he received his M.A. Degree in English Literature from the University of Delaware. Mr. Warren received his juris doctorate (JD) from the University of Michigan, School of Law. Mr. Warren is the Attorney for the state judiciary in Chuuk, Federated States of Micronesia since 2008; and he was admitted to the State Bar of Michigan and federal district court for the Eastern District of Michigan in 2003. He took and passed the FSM Bar Examination in March 2009.

Story continues on pg. 6





Passing of Sir Mari Kapi

In memoriam..

On March 26, 2009, Chief Justice Amaraich was informed by the Deputy Chief Justice of the Supreme Court of Papua New Guinea (PNG), Justice Salika Gibbs, of the untimely passing of the former Chief Justice of PNG, Honorable, Sir Mari Kapi. Chief Justice Kapi passed away in a hospital (Raffles Hospital) in Singapore on the evening of March 25, 2009 while arrangement was underway to prepare him for a kidney transplant from his brother.

Upon receipt of the sad news, Chief Justice Amaraich wrote Deputy Chief Justice Gibbs to express to the Family of Sir Mari Kapi the FSM Supreme Court 's and local judiciaries' heartfelt condolences. Chief Justice Amaraich said Sir Mari Kapi's passing was a "loss of a great leader, a friend and a true Pacific Islander."

Sir Mari Kapi was the first Chairman of the Program Executive Council (PEC) for the Pacific Judicial Development Program (PJDP). He represented the region of Melanesia on PEC. He retired from active duty as the Chief Justice of PNG in August 2008 due to

poor health, after serving half of his 10-year tenure in the top judicial post since his appointment on Aug 16, 2003. At his official farewell ceremony , he was described by the new Chief Justice, Sir Salamo Injia, PNG Law Society President Kerenga Kua and Minister for Justice and Attorney-General Dr Allan Marat as "a top national jurist" and a "perfect role model" in the legal fraternity and judiciary for upholding the rule of law.

He was also known as an "oasis of calm and reason" who was conducive to highly intellectual exchanges between bench and bar.

Succeeding him as the Chairman of PEC is Chief Justice Patu Sapolu of Samoa and as the representative of the Melanesia region is Chief Justice Vincent Lunebek of Vanuatu.

In his letter to Sir Mari Kapi's successor, Chief Justice Hon. Salamo Injia, PEC Chairman Saplou offered PEC members sincere condolences and expressed deepest sympathies to Lady Kapi, family, judiciary and the people of PNG for his untimely passing. Chairman Saplou also acknowledged "Sir Mari's significant contribution to Pacific judicial programmes, including as the former Chairman of the Programme Executive Committee."



In Memoriam

Majuro, Marshall Islands

Associate Judge, Honorable Billy Samson of the District Court of the Republic of the Marshall Islands (RMI) on Ebeye/ Kwajelin passed away in Honolulu, Hawaii on April 17, 2009, (April 18, 2009 Majuro date), after several weeks in the hospital according to a message sent out by the Chief Justice, Honorable Carl Ingram of the Republic of the Marshall

Islands on April 19, 2009 to the Pacific Judiciaries and Legal Community.

Judge Samson committed and dedicated nearly 30 years of his career life working for the RMI Judiciary. He was appointed as an Assistant Clerk of Court on Ebeye in 1982, a position he held for 19 years (from 1982 to 2001). In 2001, he was appointed and served as the Associate Judge of the District Court of the RMI on Ebeye from 2001 to April 18, 2009.

"It is with sadness that I inform you of the death of Judge Billy Samson. His service to the people and the Government of the Marshall Islands is deeply appreciated and will be missed. Judge Samson was also known as an active member of his church, the Kwajalein UCC. Although a man of many accomplishments, he was a humble man," said Chief Justice Ingram.

Judge Billy Samson was survived by his wife Mrs. Mary Matthew, 8 children, and 13 grand children.



Upward Students' Visit Palikir, Pohnpei

The Upward Students, the Trio-Program under the College of Micronesia-FSM, visited the Capitol of the Federated States of Micronesia in order to familiarize themselves with the roles and functions of the branches of the national government and the various departments. The group comprised of over sixty students from all over the FSM. The visit was a success. The Vice President of the FSM, the Honorable Alik L. Alik led the presentations followed by various employees of departments of the executive branch; the FSM Supreme Court's National Justice Ombudsman and the Chief Clerk of Court who made a brief presentation on behalf of the Court on the roles and functions of the FSM Supreme Court, the FSM National Law Day and the FSM Legal Information System. Chairman Halbert of the Committee on Ways and Means of the Fifteenth Congress of the Federated States of Micronesia and staff of the FSM Congress made a presentation on behalf of Congress.

Appeal Case C1-2005

This appeal came for oral argument at the FSM Supreme Court Chuuk Branch before the appellate panel comprising Chief Justice Andon L. Amaraich, Associate Justice Martin G. Yinug and Associate Justice Ready E. Johnny.

The appellants, Alex Narruhn, Ateny Inichi and Anna Reyes petitioned the FSM Supreme Court Appellate Division to review the Appellate Division of the Chuuk State Supreme Court's decision affirming its Trial Division's decision determining that Gadvin Aisek, appellee, was the owner of the island of Fonomu after he purchased it from its previous owners, the Fesilim Clan. The FSM Supreme Court Appellate Division granted appellants' petition and oral arguments was held on September 2, 2008.

The appellants presented three issues as follows: (1) are the trial court's factual findings clearly erroneous; (2) are the trial court's legal conclusions erroneous; and (3) was the trial court's decision supported by custom and tradi-

tion.

To find that the trial court factual finding is in error, the appellate court must first determine that the trial court's finding was clearly erroneous. The finding of the trial court will only be set aside if there is no credible evidence in the record to support that finding. After reviewing the evidence presented to the trial court, the appellate court ruled that there is credible evidence to support the trial court's findings under the circumstances and because the trial court has wide discretion in weighing the credibility of the evidence presented. The court rejected appellants' arguments relating to the second issue because it found the trial court's finding in the first issue to be supported by credible evidence.

The appellate court concluded that despite conflicting evidence in the record, the trial court's findings are supported by credible evidence and its legal conclusions are supported by applicable law and the decision is consistent with local custom and tradition. The decision of the trial court was therefore affirmed.

Appeal Case C3-2007

This appeal came for oral argument on September 2, 2008 at the FSM Supreme Court Chuuk Branch before the appellate panel comprising Chief Justice Andon L. Amaraich, Associate Justice Martin G. Yinug and Temporary Associate Justice Aliksa B. Aliksa.

The appellant Rokofich Kasmiro appealed the FSM Supreme Court Trial Division's order finding him guilty of aiding and abetting the possession of illegal firearm in violation of title 11 of the FSM Code, section 1023(5); and aiding and abetting the possession of ammunition in violation of title 11 of the FSM Code, sections 1002 and 301(1)(d).

Kasmiro raised on appeal the following issues: (1) did the trial court err as a matter of law in convicting Kasmiro of the crimes charged, or was he tried and convicted for the wrong crime; (2) was the evidence presented sufficient to convict

Kasmiro of the crimes charged; (3) did the trial court err as a matter of law in not granting the motion to acquit made at the beginning of trial and after the FSM closed its case; (4) did the trial court err by not following its own motion in limine and allowing evidence of other crimes that prejudiced Kasmiro; and (5) did the trial court err by admitting into evidence the statement given by Kasmiro.

The appellant's first argument was that a variance existed between the charging instrument and proof adduced at trial. He argued that because of this variance, the trial court's reliance upon the evidence presented at the trial prejudiced him and was therefore ground for overturning his conviction. The appellate court found itself in agreement with the appellant's arguments and as a result, overturned his conviction. The other four issues presented by the appellant, the court said, are moot in light of the disposition of the primary issue, and the court did not address them.

The third issue of the Newsletter carried this photograph of Can You ID? No response or identification of the photo was received.

The photo is the picture of the FSM Supreme Court Building in Chuuk and the power pole that supplies the electrical cables to the Courthouse. The significance of the photo is that the power pole is leaning and falling toward the Court building and will soon crash onto the Courthouse, causing power outage and inflict injury and even death to the people and property in the Court building. Justice Ready Johnny's Office is directly in the line of the falling power pole. Another significant thing about the situation is that for several years the Court has been seeking the assistance of the Chuuk Public Utility Corporation (CPUC), but actions has not been taken. It is hoped that the government and the CPUC will take action to replace and relocate the power pole to avoid injury to people and property. The ground where the power pole stands is very soft because it is a swamp.



Can You Identify how old this vehicle is? And what is significant about this ? (FSM Supreme Court Personnel are prohibited from participating)



Write answer in letter format and address it to the Office of the Chief Justice. Letter should be able to identify picture and tell the significance of the photo. (See last page for mailing address)

Special proceeding continues.

Mr. William E. Minkley is a citizen of the United States of America and a Public Defender for the State of Chuuk, Federated States of Micronesia. He received his Juris Doctorate (JD), from the University of Texas School of Law in 1968 and he has been a practicing attorney in the State of Texas since February, 1971; he is a member of the Bar of the State of Texas and is in good standing; he is an attorney with 38 years of experience in both State and Federal courts in Texas. He took and passed the FSM written Bar Examination in March 009.



ABOUT THE LAW

The last "About the Law" segment discussed various ways of collecting information about an opposing party's case that the FSM Rules of Civil Procedure permit the parties to a lawsuit to use. This process of gathering information about an opposing party's case is known as discovery. Discovery enables the parties to find out the relevant facts about the opposing party's case. "Relevant" has a technical definition under the Rules, but one way of thinking about relevant facts is to consider that relevant facts are the ones that will strengthen a party's own case, and weaken the case of an opposing party. The last segment looked at interrogatories (which are written questions that you ask an opposing party to answer in writing) under Civil Rule 33; document production and entry upon land for inspection under Rule 34; and physical and mental examinations under Rule 35.

Before moving on to a discussion about the next discovery technique under Rule 36, it is interesting to note that Rule 35 calls into question something called the doctor/patient privilege. Under this principle of the law, a patient can prevent other people from finding out information about his or her medical records. This reflects the long-established idea that a person's health is a private matter, and that only an individual and his or her doctor needs to know about these things. This means that a doctor cannot give other people information about a patient's medical records without the patient's consent. In the usual case under Rule 35, a plaintiff is attempting to get the opposing party to pay him money as a way to give him something to make up for the injuries that he has suffered as a result of the opposing party's actions, an example being where someone is injured in an automobile accident and then sues the party who caused the injury. Generally in such instances, the power that a patient has to prevent disclosure of the information is considered to be given up by the patient, because the patient is the one who is making an issue of his or her medical condition by suing the other party for damages. The patient may not refuse to provide information about his physical condition in such situations, since it is fair that the opposing party should be able to find out about the extent of the injury, and hence the extent of the damages, that the plaintiff is claiming against him.

The last discovery method provided for under the FSM Rules of Civil Procedure is that of requests for admission, which is covered under Civil Rule 36. The party using this technique will make a number of statements about various matters that are relevant to the lawsuit, and then will ask the opposing party to either admit or deny the truth of the statements. Because the responding party is required to either admit or deny, this technique is best applied to short statements about a specific fact. For example, a party might ask an opposing party, "Admit that John Smith was president of ABC Corp. for the entire calendar year 2000." Statements like this lend themselves to either a direct admission or denial. This discovery technique can be useful to discover basic facts about a case that do not require elaboration or explanation.

One unique feature about requests for admission is the effect of not answering. The rule requires that within 30 days from the time the opposing party receives a copy of the requests for admission, that party must see to it that a copy of his answers are given to the party who made the requests, or, if the answering party has objections to the requests, then the answering party must be sure that a copy of those objections are given to the other party within 30 days. If the opposing party fails to do this, then all of the statements in the requests for admission are considered by the court to be true. If a party inadvertently fails to answer the requests in time, that party may apply to the court and ask that the requests not be considered to be true, but there is no guarantee that the court will relieve a party from the operation of the rule. Thus when a party receives requests for admission from the opposing party, it is very important that the party receiving the requests takes all of the steps necessary to insure that the responses are given to the other party on time.

Apart from the automatic admission of facts that can result under Rule 36, Rule 37 addresses the consequences of failure to respond to the other types of discovery permitted under the Civil Rules, and gives the court tools which it may use to compel a party to comply with discovery. The next "About the Law" segment will continue with a discussion of how the procedures set out in Rule 37 work.

Primary Business Address
 P.O. Box PS-J
 Palikir, Pohnpei
 Federated States of Micronesia 96941
 Phone: (691) 320-2763/2764
 Fax: (691) 320-2756
 E-mail:
 fsmjnosupremecourt@yahoo.com



This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.