RULES OF CRIMINAL PROCEDURE
FOR THE STATE COURT OF YAP

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RULES OF CRIMINAL PROCEDURE FOR THE STATE COURT OF YAP[1]

I. Scope, Purpose, and Construction

Rule 1. Scope

These rules govern the procedure in all criminal proceedings in the Trial Division of the State Court of Yap.

Rule 2. Purpose and Construction

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay with due recognition to the traditions and customs of the people of the State of Yap.

II. Preliminary Proceedings

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the State Court of Yap.

Rule 4. Arrest Warrant or Summons upon Complaint

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney or trial counselor for the government, a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Probable Cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. The warrant shall be signed by a justice and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a justice.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a justice at a stated time and place.

(d) Execution of Service; and Return.

(1) By Whom. The warrant shall be executed by a policeman or by some other officer authorized by law or, when the justice issuing the warrant has found exceptional circumstances requiring execution of the warrant by some other

person, by another person specifically authorized in the warrant. The summons may be served by any person authorized to serve a summons in a civil action.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Yap.

(3) Manner. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy thereof to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of residence or of business with some person of suitable age and discretion then residing or employed therein. Reasonable attempts shall also be made to assure that the person served understands that it is an important legal document from the court.

(4) Return. The officer executing a warrant shall return to the justice before whom the defendant is brought pursuant to Rule 5. At the request of the attorney or trial counselor for the government any unexecuted warrant shall be returned to the justice by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall return to the justice before whom the summons is returnable. At the request of the attorney or trial counselor for the government made at any time while the complaint is vending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the justice to the policeman or other authorized person for execution or service.

Rule 5. Initial Appearance[2]

(a) In General. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available Justice. If a person arrested without a warrant is brought before a Justice, a complaint shall be filed immediately which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before a Justice, that person shall proceed in accordance with the applicable subdivisions of this rule.

(b) Vacant. (minor offenses)

(c) Notification of Rights. The defendant shall not be called upon to plead. The Justice shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain an attorney or trial counselor, of his right to request the assignment of counsel if he is financially unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. He shall inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to talk with counsel and shall admit that defendant to bail as provided by statute or in these rules.

Rule 5.1. Preliminary Examination

(a) Probable Cause Finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the Justice shall forthwith hold him to answer. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) Discharge of Defendant. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the Justice shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) Records. After concluding the proceeding the Justice shall transmit forthwith to the Clerk of the State Court all papers in the proceeding. The Justice shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a Justice, the attorney or trial counselor for a defendant in a criminal ease may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any Justice thereof, an order may issue that the Justice make available a copy of the transcript, or of a portion thereof, to defense attorney or trial counselor. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security thereof, in which case the expense shall be paid by the State Court from available appropriated funds. Counsel for the government may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

III. Indictment and Information

Rule 6. Vacant (The Grand Jury)[3]

Rule 7. Information and Complaint[4]

(a) Use. Felony offenses shall be prosecuted by information, all others may be prosecuted by complaint.

(b) Vacant. (Waiver of Indictment)

(c) Nature and Contents of Information.

(1) In General. The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney or trial counselor for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the

defendant committed the offense are unknown or that he committed it by one or more specified means. The information shall state for each count the citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated.

(2) Criminal Forfeiture. No judgment of forfeiture may be entered in a criminal proceeding unless the information shall allege the extent of the interest or property subject to forfeiture.

(3) Harmless Error. Error in the citation or description or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) Surplusage. The court on motion of the defendant may strike surplusage from the information and complaint.

(e) Amendment. The court may permit an information or complaint to be amended at any time before finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Bill of Particulars. The court may direct the filing, of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses. Two or more offenses may be charged in the same information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons upon Information[5]

(a) Issuance. Upon the request of the attorney or trial counselor for the government a notice shall issue a warrant for the arrest of each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a). Upon the request of the attorney or trial counselor for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the policeman or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, an arrest warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the information and it shall command that the defendant be arrested and brought

before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2), and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or, general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State of Yap or at its principal place of business. The officer executing the warrant shall bring the arrested person promptly before the court.

(2) Return. The officer executing a warrant shall return it to the court. At the request of the attorney or trial counselor for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person whose name is on the summons shall return the summons. At the request of the attorney or trial counselor for the government made at any time while the information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the policeman or other authorized person for execution or service.

(d) Vacant. (Remand to United States Magistrate for trial of minor offenses)

IV. Arraignment and Preparation for Trial

Rule 10. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the information to the defendant or stating to him the charges made against him and calling on him to plead thereto. He shall be given a copy of the information before he is called upon to plead.

Rule 11. Pleas

(a) Alternatives. A defendant may plead not guilty, guilty, or nolo contenders. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) Nolo Contenders. A defendant may plead nolo contenders only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advise to Defendant. Before accepting a plea of guilty or nolo contenders, the court must inform the defendant personally in open court and make sure that he understands the following:

(1) the nature of the charge to which the plea is offered, and the maximum possible penalty that he could receive under the law; and

(2) if the defendant is not represented by counsel, that he has the right to be represented by counsel at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to a trial and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be forced to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he gives up the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false swearing.

(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney or trial counselor for the government and the defendant, his attorney or trial counselor.

(e) Plea Agreement Procedure.

(1) In General. The attorney or trial counselor for the government and the attorney or trial counselor for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney or trial counselor for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case. The court shall not participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

(3) Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant

personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant then that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided a in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere;

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) any statement made in the course of plea discussions with counsel for the government which do not result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury on false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea, and the inquiry into the accuracy of the plea.

Rule 12. Motions before Trial; Defenses and Objections

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the information and the pleas of not guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) Motion Date. The court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) Notice by Counsel for the Government of the Intention to Use Evidence.

(1) At the Discretion of Counsel for the Government. At arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) At the Request of the Defendant. At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b) (3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) Ruling on Motion. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after finding, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) Records. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) Effect of Determination. If the court grants a motion based on a defect in the institution of the prosecution or in the information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new information. Nothing in this rule shall be deemed to affect the provisions of any law of the State of Yap relating to periods of limitations.

Rule 12.1. Notice of Alibi

(a) Notice by Defendant. Upon written demand of the attorney or trial counselor for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney or trial counselor for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or

places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) Disclosure of Information and Witness. Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney or trial counselor for the government shall serve upon the defendant, his attorney or trial counselor a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing Duty to Disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party, his attorney or trial counselor of the existence and identity of such additional witness.

(d) Failure to Comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

Rule 12.2. Notice of Defense Based upon Mental Condition

(a) Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he shall, within the time provided for the filing of pretrial motions or at such time as the court may direct, notify the attorney or trial counselor for the government in writing of such intention and file a copy of such notice with the clerk of court. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Mental Disease or Defect Inconsistent with the Mental Element Required for the Offense Charged. If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney or trial counselor for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Psychiatric Examination. In an appropriate case the court may, upon motion of the attorney or trial counselor for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for

by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.

(d) Failure to Comply. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state.

Rule 13. Trial Together of Informations[6]

The court may order two or more informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution were under such single information.

Rule 14. Relief from Prejudicial Joinder[7]

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney or trial counselor for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 15. Depositions.

(a) When Taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) or this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of Expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant, his attorney, or trial counselor for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How Taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. Attorney or trial counselor for the government shall make available to the defendant or his counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the counsel for the government and to which the defendant would be entitled at the trial.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Rules of Evidence for the State Court of Yap, or the witness gives testimony at the trial or hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Deposition Testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by Agreement Not Precluded. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16. Discovery and Inspection

(a) Disclosure of Evidence by the Government.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request of a defendant, attorney or trial counselor for the government shall permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government; the substance of any oral statement which the counsel for the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent.

(B) Defendant's Prior Record. Upon request of the defendant, counsel for the government shall furnish to the defendant such copy of his prior

criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government.

(C) Documents and Tangible Objects. Upon request of the defendant, counsel for the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense, or are intended for use by the counsel for the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Report of Examinations and Tests. Upon requests of a defendant, the counsel for the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney or trial counselor for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(E) Prosecution Witnesses. Upon request of a defendant, the counsel for the government shall provide to the defendant the name and address of any person whom the prosecuting attorney or trial counselor intends to call as a witness together with statements made by the witnesses, and the record of any felony convictions of such proposed witnesses which is in the possession of the counsel for the government.

(F) Material Favorable to Defendant. Upon request of a defendant, counsel for the government shall provide to the defendant any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.

(2) Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a) (1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney or trial counselor for the government or other government agents in connection with the investigation or prosecution of the case.

(3) Vacant.

(b) Disclosure of Evidence by the Defendant.

(1) Information Subject to Disclosure.

(A) Documents and Tangible Objects. If the defendant requests disclosure under subdivision (a) (1) (C) or (D) of this rule, upon compliance with such request by counsel for the government, the defendant, on request of counsel for the government, shall permit the counsel for the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portion thereof, which are within the possession, custody, or control of the

defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (a) (1) (C) or (D) of this rule, upon compliance with such request by counsel for the government, the defendant, on request of counsel for the government, shall hermit counsel for the government to inspect and copy or photograph any results or reports or physical or mental examinations and of scientific or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(C) Defense Witnesses. The defendant, on request of counsel for the government, shall state the nature of any defense which he intends to use at trial and the name and address of any person whom the defendant intends to call as a witness in support of his defenses.

(2) Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, to the defendant, his agent, attorney or trial counselor.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, or discovers additional witnesses or defenses, the party shall promptly notify the other party, his attorney, trial counselor or court of the existence of the additional evidence, material, witness or defense.

(d) Regulation of Discovery.

(1) Protective and Modifying Orders. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to Comply with a Request. If any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi Witnesses. Discovery of alibi witnesses is governed by Rule 12.1.

Rule 17. Subpoena

(a) For Attendance of Witnesses; Form; Issuance. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Witness Expenses. The court shall order at any time that subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys or trial counselors.

(d) Service. A subpoena may be served by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and, by tendering to him the fee for one (1) day's attendance and the mileage allowed by law. Reasonable attempts shall also be made to inform the person served with the subpoena, that the subpoena is an important document from the court that requires prompt attention and response. Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the State of Yap, or any governmental officer or agency charged with the responsibility of enforcing the criminal laws of the Yap State Government. At or before the time stated for appearance in a subpoena, the person to whom such a subpoena is delivered for service shall write a report of his action on it, sign it and have it delivered to the court named therein. If he has served the subpoena, his report shall show the date, place, and method of service.

(e) Place of Service.

(1) In the State of Yap. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Yap.

(2) Vacant. (Abroad)

(f) For Taking Deposition; Place of Examination.

(1) Issuance. An order to take a deposition authorizes the issuance by the clerk of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court.

(h) Information Not Subject To Subpoena. Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 16(a)(1)(E) and 26.2.

Rule 17.1. Pretrial Conference

At any time after the filing of the information the court upon motion of any party or upon its own motion may order one or more conference to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney or trial counselor at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney or trial counselor. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

V. Venue

Rule 18. Vacant (Place of Prosecution and Trial)

Rule 19. Vacant (Rescinded)

Rule 20. Vacant (Transfer from the District for Plea and Sentence)

Rule 21. Vacant (Transfer from the District for Trial)

Rule 22. Vacant (Time of Motion to Transfer)

VI. Trial

Rule 23. Finding by the Court upon Trial

The Court shall make a general finding and shall in addition, on request made before the general finding, find the general finding, find the facts specially. Such finding may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Rule 24. Vacant (Trial Jurors)[8]

Rule 25. Disability of Justice[9]

(a) During Trial. If by reason of death, sickness or other disability the Justice before whom a trial has commenced is unable to proceed with the trial, a new trial shall be granted before any another Justice, unless waived by both parties, in which event the other Justice, upon certifying his familiarity with the record of the trial, may proceed with and finish the trial.

(b) After Finding of Guilt. If by reason of death, sickness or other disability the Justice before whom the defendant has been tried is unable to perform the duties to be performed by the court after a finding of guilt, any other Justice may perform those duties; but if such other Justice is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Rule 26. Taking of Testimony

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by state statute or by these rules.

Rule 26.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence of this Court. The court's determination shall be treated as a ruling on a question of law.

Rule 26.2. Production of Statements of Witnesses

(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney or trial counselor for the government or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified

(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over his objection shall be preserved by counsel for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate division of the state court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of that party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the counsel for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him; or

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement or that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof.

Rule 27. Proof of Official Record

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. Interpreters

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

Rule 29. Motion for Judgment of Acquittal[10]

(a) Motion Before Parties Rest. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence of either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) Vacant. (Reservation of Decision on Motion)

(c) Vacant. (Discharge by Jury)

Rule 29.1. Closing Argument

After the closing of evidence, the prosecution shall oven the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Vacant. (Instructions)[11]

Rule 31. Finding[12]

(a) Return. The finding of the justice shall be returned in open court.

(b) Vacant. (Several Defendants)

(c) Conviction of Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Vacant. (Poll of Jury)

(e) Criminal Forfeiture. If the information alleges that an interest or property is subject to criminal forfeiture, an order shall be returned as to the extent of the interest or property subject to forfeiture, if any.

VII. Judgment

Rule 32. Sentence and Judgment

(a) Sentence.

(1) Imposing of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford the attorney or trial counselor an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to

present any information in mitigation of punishment. The counsel for the government shall have an equivalent opportunity to speak to the court.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant. so requests, the clerk of court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) In General. A judgment of conviction shall set forth the plea, the findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the justice and entered by the clerk.

(2) Criminal Forfeiture. When a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the attorney general to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation.

(1) When made. Upon order of the court, the probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) Before imposing sentence, the court shall, upon request, permit the defendant, or his trial counsel if he is so represented, to read the report of the presentence investigation a exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c) (3) (A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained

therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney or trial counselor for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the counsel for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) Vacant.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) Vacant. (Probation)

(f) Vacant. (Revocation of Probation)

Rule 32.1. Revocation or Modification of Probation

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he shall be afforded a prompt hearing before a justice in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his own behalf

(C) upon request, the opportunity to question witnesses against him unless, for good cause, the justice decides that justice does not require the appearance of the witness; and

(D) notice of his right to be represented by counsel. The proceedings shall be recorded stenographically or by an electronic recording device. If probable cause is found to exist, the probationer shall be held for a revocation hearing. The probationer may be released pursuant to Rule 46(c) pending the revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time. The probationer shall be given:

(A) written notice of the alleged violation of probation;

(B) disclosure of the evidence against him;

(C) an opportunity to appear and to present evidence in his own behalf;

(D) the opportunity to question witnesses against him; and

(E) notice of his right to be represented by counsel.

(b) Modification of Probation. A hearing and assistance of an attorney or trial counselor are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his request or the court's own motion is favorable to him.

Rule 33. New Trial[13]

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. The court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after finding of guilt or within such further time as the court may fix during the 7 day period.

Rule 34. Arrest of Judgment[14]

The court on motion of a defendant shall arrest judgment if the information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after the finding of guilt, or after plea of guilty or nolo contendere, or with such further time as the court may fix during the 7 day period.

Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the State Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

Rule 36. Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

VIII. Appeal

Rule 37. Vacant (Abrogated eff. July 1, 1968)[15]

Rule 38. Stay of Execution, and Relief Pending Review

(a) Stay of Execution.

(1) Vacant. (Death)

(2) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the state court Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained under conditions, and at a place, which permit the defendant to assist in the preparation of his appeal to the Appellate Division of the State Court.

(3) A sentence to pay a fine or fine and costs, if an appeal is taken, may be stayed by the Trial Court or by the Appellate Division upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and 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.

(4) Probation. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed, the court shall fix the terms of the stay.

Rule 39. Vacant. (Defer)

Rule 40. Vacant. (Commitment to another District; Removal)

IX. Supplementary and Special Proceedings

Rule 41. Search and Seizure

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a justice upon the request of a policeman or an attorney or trial counsel for the government.

(b) Property or Persons Which May Be Seized with a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents.

(1) Warrant upon Affidavit. A warrant shall issue only on an affidavit or affidavits sworn to before a justice and establishing the grounds for issuing the warrant. If the justice is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant, the justice may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made a part of the affidavit. The warrant shall be directed to a policeman: It shall command the policeman to search, within a specified period of time which may not exceed ten (10) days unless a longer period is authorized by the court, the person or place named for the property specified. The warrant shall be served in the daytime,

unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate the justice to whom it shall be returned.

(2) Warrant upon Oral Testimony.

(A) General Rule. If the circumstances make it reasonable to dispense with a written affidavit, a justice may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means.

(B) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the justice. The justice shall enter, verbatim, what is so read to such justice on a document to be known as the original warrant. The justice may direct that the warrant be modified.

(C) Issuance. If the justice is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the justice shall order the issuance of a warrant by directing the person requesting the warrant to sign the justice's name on the duplicate original warrant. The justice shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) Recording and Certification of Testimony. When a caller informs the justice that the purpose of the call is to request a warrant, the justice shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the justice shall record by means of such device all of the call after the caller informs the justice that the purpose of the call is to request a warrant. Otherwise a stenographic or long-hand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the justice shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the justice shall file a signed copy with the court.

(E) Contents. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) Additional Rule for Execution. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) Motion to Suppress Precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(d) Execution and Returns with Inventory. The policeman taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for .the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the policeman. The justice shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motions for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The justice shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If the motion for return of property is made or comes on for hearing after an information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to Suppress. A motion to suppress evidence may be made in as provided in Rule 12.

(g) Return of Papers to Clerk. The justice before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of court.

(h) Definition. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time.

Rule 42. Criminal Contempt[16]

All adjudications of contempt shall be pursuant to the following practices and procedures:

(a) Notice. Any person accused of committing a criminal contempt shall have a right to notice of the charges and an opportunity to present a defense and mitigation; provided, that no punishment of a fine of more than $100.00 or imprisonment shall be imposed unless the accused is given a right to notice of the charges, to a speedy public trial, to confront the witnesses against him, to compel the attendance of witnesses in his behalf, to have the assistance of counsel, and to be released on bail pending adjudication of the charges. He shall have a right to be charged within three months of the contempt and a right not to be charged twice for the same contempt.

(b) Fine or Imprisonment. A person found to be in contempt of court shall be fined not more than $1,000.00 or imprisonment for not more than six months.

(c) Appeal. Any adjudication of contempt is subject to appeal to the Appellate Division of the State Court. Any punishment of contempt may be stayed pending appeal, but a punishment of imprisonment shall be stayed on appeal automatically, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice, which finding must be supported by written findings of fact. A denial of a stay of imprisonment is subject to review.

X. General Provisions

Rule 43. Presence of the Defendant

(a) Presence Required. The defendant shall be present at arraignment, at the time of the plea, at every stage of the trial including the finding of the court, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required. The further progress of trial to and including the return of the finding of the court shall not be prevented and the defendant shall be considered to have waived his right to be present whenever a defendant, initially present,

(1) voluntarily absents himself after the trial has commenced (whether or not he has been informed by the court of his obligation to remain during the trial), or

(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for offenses punishable by fine or by the imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and the imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

Rule 44. Right to and Assignment of Counsel

(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have an attorney or trial counselor assigned to represent him at every stage of the proceedings from his initial appearance through appeal, unless he waives such appointment.

(b) Vacant.

(c) Joint Representation. Whenever two or more defendants have been jointly charged pursuant to Rule 8(b), or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counselor or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

Rule 45. Time[17]

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day,

President's Day, Federated States of Micronesia Day, Congress of Micronesia Day, Independence Day, Labor Day, Columbus Day, United National Day, Veterans Day, Memorial Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the Federated States of Micronesia, or the Governor of Yap.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) Vacant. (Rescinded eff. July 1, 1486)

(d) For Motions; Affidavits. A written motion together with memorandum of points and authorities, other than one which may be heard ex parte and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless ,a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 6 days shall be added to the prescribed period.

Rule 46. Release from Custody[18]

(a) Release Prior to Trial.

(1) Any person charged with an offense shall, at his appearance before a justice be ordered release pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the justice, unless the justice determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the justice shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(A) place the person in the custody of a designated person or organization agreeing to supervise him;

(B) place restrictions on the travel, association, or place of abode of the person during the period of release;

(C) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, or a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(D) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(E) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) In determining which conditions of release will reasonably assure appearance, the justice shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(3) A justice authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violation of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(4) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the justice who imposed them. Unless the conditions of release are amended and the person is thereupon released, the justice shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the justice who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the justice shall set forth in writing the reasons for continuing the requirement. In the event that the justice who imposed conditions of release is not available, any other justice may review such conditions.

(5) A justice ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: Provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (4) shall apply.

(6) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(7) If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shorn that it may become impracticable to secure his presence by subpoena, a justice shall impose conditions of release pursuant to Rule 46(a) (1) through (6) above. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable

period of time until the deposition of the witness can be taken pursuant to Rule 15.

(b) Release During Trial. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Pending Sentence and Notice of Appeal. A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in accordance with the provisions of Rule 46(a)(1) through (6) above unless the court or justice has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

(d) Justification of Sureties. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture.

(1) Declaration. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of a default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of Detention Pending Trial. The court shall exercise supervision over the detention of defendants and witnesses pending trial for the purpose of eliminating all unnecessary detention. The attorney or trial counselor for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending information, arraignment or trial for a period in excess of ten days. As to

each witness so listed the counsel for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the counsel for the government shall make a statement of the reasons why the defendant is still held in custody.

Rule 47. Motions[19]

(a) Written or Oral. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

(b) Memorandum of Points and Authorities. Every motion shall be accompanied by a memorandum of points and authorities which discusses the issues presented by the motion. If the respondent opposes the motion, he shall file a memorandum of points and authorities which discusses the issues presented by the motion and responds to the arguments of the movant.

(c) Hearing and Notice. Except for motions which properly can be disposed of ex parte, the Court shall hold a hearing on every motion prior to disposition thereof. The movant shall give written notice to all parties of the time and place of the hearing in accordance with Rule 45. The notice shall be served with the motion or separately at a later time.

(d) Sanctions. Failure of attorney or trial counselor for a party to file the required memorandum of points and authorities may, in the discretion of the Court, subject the defaulting counsel to the imposition of sanctions, including but not limited to refusal by the Court to hear counsel at the hearing, or postponement of the hearing until the memorandum is prepared and filed.

Rule 48. Dismissal[20]

(a) By Attorney or Trial Counselor for Government. The attorney or trial counselor for the government may by leave of court file a dismissal of an information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendants.

(b) By Court. If there is unnecessary delay in filing an information against a defendant who has been held to answer, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the information or complaint.

Rule 49. Service and Filing of Papers[21]

(a) Service: When Required. Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be, made upon a party represented by an attorney or trial counselor, the service shall be made upon the counsel unless service upon the party himself is ordered by the court. Service upon the counsel or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail a notice thereof to each party, or shall have

each party served with a notice thereof. The clerk shall note in the docket the provision and method of notice.

(d) Filing. Papers required to be served shall be filed with the court. Payers shall be filed in the manner provided in civil actions.

Rule 50. Calendars; Plan for Prompt Disposition

(a) The court may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(b) Vacant. (Plan for Achieving Prompt Disposition of Criminal Cases).

Rule 51. Exceptions Unnecessary

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be discarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Regulation of Conduct in the Courtroom

The taking of photograph in the courtroom during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the courtroom shall not be allowed except otherwise permitted by the court.

Rule 54. Application and Execution

(a) Court. These rules apply to all criminal proceedings in the State Court of the State of Yap.

(b) Vacant. (Proceeding)

(c) Application of Terms. As used in these rules, the following have the designated meanings:

(1) "Justice" means the Chief Justice or any Associate Justice.

(2) Counsel means an attorney or trial counselor.

(d) Comments. Where there is no comment after each rule, the rule is the same as the Federal Rule. If a rule has comment after it, there are some changes as additions made.

Rule 55. Records

The clerk of the court shall keep such records in criminal proceedings as the Chief Justice shall prescribe. Among the records required to be kept by the clerk shall be a book known as the

"criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order of judgment shall show the date the entry is made.

Rule 56. Courts and Clerks[22]

The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office shall be open during business hours on all days except Saturdays, Sundays and legal holidays, unless provided by order of the court.

Rule 57. Rules of Court[23]

(a) Vacant. (Rules by Districts Courts)

(b) Procedure Not Otherwise Specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

Rule 58. Vacant (Forms)[24]

Rule 59. Effective Date

These rules take effect on March 9, 1982. They govern all criminal proceedings thereafter commenced and as far as just and practicable all proceedings then pending.

Rule 60. Title

These rules may be known and cited as the Rules of Criminal Procedure for the Trial Division of the State Court of Yap.

Notes on the Rules of Criminal Procedure for the State Court of Yap

[1] General Court Order (GCO) 1982-1 approved the Rules of Criminal Procedure. GCO 1982-1 became effective on March 8, 1982. There are no other general court orders involving the Rules of Criminal Procedure; accordingly, no amendments have been made to the Rules of Criminal Procedure since their adoption. Furthermore, when the Rules of Criminal Procedure were adopted, certain rules were followed by a "comment" that explained the purpose or policy behind the rule, often referring to its U.S. federal counterpart in force at the time. For ease of readability, the comments will now appear in these notes instead of the main text of the rules.

[2] Comment: Rule 5(b) is deleted because minor offense is triable/under these rules rather than under separate procedures.

[3] Comment: The jury system is not applicable here.

[4] Comment: This rule has been changed to include prosecution by complaint.

[5] Comment: Rule 9(d) is vacated as inapplicable.

[6] Comment: This rule follows the U.S. Federal rule verbatim except that any reference to indictments is deleted.

[7] Comment: This rule follows the U.S. Federal rule verbatim with the sole exception of deleting one reference to indictment.

[8] Comment: This rule is vacated as inapplicable.

[9] Comment: Rule 25(a) is different from the Federal Rule to the extent that any inference to a jury is deleted.

[10] Comment: This rule is patterned after Federal rule 29 except that any reference to indictment or trial by jury is deleted.

[11] Comment: Federal rule 30 pertains to jury instructions and so is not included.

[12] Comment: This rule follows Federal rule 31, but deleting references to juries, and multiple defendants.

[13] Comment: This is the same as Federal rule 33 except the reference to a jury trial is deleted.

[14] Comment: This follows Federal rule 34 except references to "indictment" and "verdict" are deleted.

[15] Comment: This is vacant because Federal rule 37 has been abrogated. New appellate procedures rules.

[16] Comment: Sections (a) and (b) of this rule are regulated by Section 27 of the Yap State Judiciary Act and abstracted therefrom.

[17] Comment: This rule is based on the Federal rule. There are two principal changes: (1) the time periods for motions and responsive papers are set forth, with the requirement that the motion and the opposition be supported by memoranda of points and authorities; and (2) the additional time allowed after service by mail is increased from 3 days to 6. Rule 45(d) is slightly different than the Federal Rules in light of the additions to Rule 47(b), (c), (d).

[18] Comment: This rule follows Federal rule 46. It is adopted to change the reasons under which release is available from primarily cash bill, as is now practiced, under TT rules 27 and 31, and 12, T.T.C Sections 251 through 258, to conditions slightly less harsh and more flexible which will assure the defendant's return to court.

Where Federal rule 46 referred to sections in Title 18 of the United States Code, those sections have been set forth in their entirety in the preparation of this rule.

[19] Comment: This Rule partially follows the Federal rules as to (a). Sections (b), (c), and (d) have been added to set out the procedures needed for making a motion.

[20] Comment: This rule follows the Federal rule except it omits any reference to indictment. The rule is also very similar to 12 T.T.C. 351, 352, but adds clarification that delay in filing an information may result in dismissal.

[21] Comment: (deleted the last sentence of Rule 49(d) above)

[22] Comment: This rule follows Federal rule 56. Changes to reflect exactness in terminology.

[23] Comment: This follows Federal rule 57(e), and TT rule 32.

[24] Comment: This court does not anticipate issuing an appendix of forms, but practitioners may wish to refer to the Federal rules appendix of forms for guidance.