

CHAPTER 9**New Trial—Appeal and Review****SECTIONS**

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§ 901. Effect of irregularities.

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order, or in anything done or omitted by the court, or by any of the parties shall constitute a ground for granting a new trial, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

Source: TT Code 1966 § 337; TT Code 1970, 6 TTC 351; TT Code 1980, 6 TTC 351.

§ 902. When appeals may be taken.

Any appeal authorized by law may be taken by filing a notice of appeal with the presiding judge of the court from which the appeal is taken, or with the clerk of the court for the District in which the court was held, within 30 days after the imposition of sentence or entry of the judgment, order, or decree appealed from, or within such longer time as may be prescribed by rules of procedure adopted by the Chief Justice of the Trust Territory under section 502 of title 5 of this code.

Source: TT Code 1966 § 198; TT Code 1970, 6 TTC 352; TT Code 1980, 6 TTC 352.

§ 903. Right of Trust Territory Government to appeal.

(1) In a criminal case, the Government shall have the right of appeal only when a written enactment intended to have the force and effect of law has been held invalid. Action on any such appeal shall be limited as provided in

section 905 of this chapter.

- (2) In civil cases, the Government shall have the same right of appeal as private parties.

Source: TT Code 1966 § 198; TT Code 1970, 6 TTC 353; TT Code 1980, 6 TTC 353.

§ 904. Review of District and community courts' decisions.

The Trial Division of the High Court shall review on the record every final decision of the District courts and the community courts in annulment, divorce, and adoption cases in which no appeal has been taken, and it may, in its discretion, review on the record any other final decision of a District or community court in which no appeal has been taken.

Source: TT Code 1966 § 199; TT Code 1970, 6 TTC 354; TT Code 1980, 6 TTC 354.

§ 905. Powers of courts on appeal or review.

(1) The High Court on appeal or review and the District court on appeal shall have power to affirm, modify, set aside, or reverse the judgment or order appealed from or reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just.

(2) The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous, but in all other cases the appellate or reviewing Court may review the facts as well as the law.

(3) In a criminal case, the appellate or reviewing Court may set aside the judgment of conviction, or may commute, reduce (but not increase), or suspend the execution of the sentence, and, if the defendant has appealed or requested a new trial, the appellate or reviewing Court may order a new trial; but if the Government has appealed in a criminal case as authorized in section 903 of this chapter, the appellate or reviewing Court may not reverse any finding of not guilty, and its powers shall be limited to a reversal of any determination of invalidity of an enactment intended to have the force of law.

Source: TT Code 1966 § 200; TT Code 1970, 6 TTC 355; TT Code 1980, 6 TTC 355.

§ 906. Stay of execution.

Pending review or the hearing and determination of an appeal, execution of the judgment, order, or sentence of a court will not be stayed unless:

- (1) the appellate court, reviewing court, or the trial court orders a stay for cause shown and upon such terms as it may fix; or
- (2) as otherwise provided by law.

Source: TT Code 1966 § 201; TT Code 1970, 6 TTC 356; TT Code 1980, 6 TTC 356.

§ 907. Decisions of Appellate Division of High Court final until action by U.S. Congress.

Unless and until the Congress of the United States provides for an appeal to a court created by Act of Congress, the decisions of the Appellate Division of the High Court shall be final.

Source: TT Code 1966 § 202; TT Code 1970, 6 TTC 357; TT Code 1980, 6 TTC 357.

Cross-reference: The FSM Supreme Court website can be found at <http://www.fsmsupremecourt.fm/>.

Editor's note: The following are case annotations dealing with appeals to the FSM Supreme Court Appellate Division that are placed here as reference.

Case annotations:

Cases On Appellate Procedures to the FSM Supreme Court Appellate Division

If the appellate court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. *Phillip v. Moses*, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

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

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

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

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

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

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

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

In all cases in which an appellee seeks Rule 38 damages, an appellee shall file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 441 (App. 2004).

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