ADMINISTRATIVE LAW

A court should not decide a constitutional issue when there remains a possibility that an administrative decision will obviate the need for a court decision. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

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

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. When disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM R. 339, 362-63 (Pon. 1983).

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

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

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

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

Analysis of a claim of bias of an administrative decision-maker begins with a presumption that decision-makers are unbiased. The burden is on the challenger to show a conflict of interest or some other specific reason for disqualification. Specific facts, not mere conclusions, are required in order to rebut the presumption. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

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

There are varying degrees of familial relationships and Micronesian legislative bodies have consistently instructed the courts that not every family relationship requires disqualification. An

affidavit, stating that an administrative decision-maker is a relative of a party, but not saying whether he is a near relative and failing to set out the degree of relationship, is insufficient to constitute a claim of statutory violation. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 100 (Kos. S. Ct. Tr. 1987).

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

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

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

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

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

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

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

Congress may constitutionally authorize by statute administrative agencies to perform many different investigatory functions, among them the auditing of books and records, the issuance of subpoenas requiring the disclosure of information relevant to the agency's functions, and requiring the sworn testimony of witnesses. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 141-42 (Pon. 1995).

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

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

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

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

In administrative law in regard to controversies in which the same parties and the same subject matter are involved, when two or more tribunals have concurrent jurisdiction, the tribunal first assuming jurisdiction retains it to the exclusion of all other tribunals in which the proceeding might have been initiated. Mark v. Chuuk, 8 FSM R. 582, 583-84 (Chk. S. Ct. Tr. 1998).

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

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

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

While the naked right to legislate may not be delegated, the power to enforce legislation and to enlarge on standards defined in a statute can be delegated if the statute contains reasonable guidance and reasonable definition of the standards to be employed and the matter that is to be regulated. In order for the delegation of legislative authority to pass constitutional muster, there must be a delineation of policy, a designation of the agency to implement it, and a statement of the outer boundaries of the authority delegated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

If the legislative body has given to administrative officials the power to bring about the result legislated, rather then the power to legislate the result, then there is no unconstitutional delegation of legislative power. A proper delegation of legislative power may be made to an official within the executive branch. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may make a delegation of power to specified officials, or administrative agencies within the executive branch. This necessarily includes the Governor, and such a delegation is appropriate because a proper, limited delegation of power confers on the delegatee the power to bring about a result that has already been legislated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

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

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

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

Chuuk Election Code, section 55 involves complaints in general by any citizen involving any misconduct and a candidate, when the candidate is contesting the election of another, is required, not to follow section 55, but to follow the administrative process specifically set forth in sections 123 through 130 for election contests. The completion of the administrative process outlined in section 55 is delegated to the Election Commission, not to the complainant since it is the Commission that makes the referrals to the other agencies, not the complainant. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

Annual representation fund allowance are funds restricted to the purposes and by the procedures set forth in the Representation Fund Act. Chuuk v. Robert, 16 FSM R. 73, 79 (Chk. S. Ct. Tr. 2008).

Any regular employee who is suspended for more than the three working days, demoted, or dismissed may appeal to the branch head or his designee within fifteen days after written notice of the suspension, demotion or dismissal has been transmitted to him, and upon receiving such appeal, the branch head, or his designee, shall form an ad hoc hearing committee of three members. Palsis v. Kosrae, 16 FSM R. 297, 312 (Kos. S. Ct. Tr. 2009).

If an employee=s immediate supervisor does not settle a grievance to the employee's satisfaction, then the employee may forward the grievance in writing to the State Personnel Officer and request review by a formal panel. The formal panel will then be provided with the necessary government records, hear the grievance, and make its recommendation to the Governor. The Governor then resolves the grievance. The administrative procedure does not include asking the Director of the Department of Administrative Services to resolve the matter (unless the Director is the aggrieved employee's immediate supervisor). Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

Cases involving effective denials by administrative bodies generally arise where the

administrative body fails to take steps to provide an administrative remedy. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

A grant of the power to "sue and be sued" is the usual legal formulation by which a government agency is granted the power to independently hire its own attorneys instead of being represented by the attorney general. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

When the FSM public laws that created a government agency did not confer upon that agency the power to sue and be sued in its own name, that agency cannot be represented in court by any counsel other than the FSM Attorney General. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

Since the Federated Development Authority was an instrumentality of the national government created by an FSM Congress enactment, the presence of (uncompensated) persons, who are not national government employees on the FDA Policy Board does not make the FDA something other than a national government instrumentality. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A government agency=s power to sue and be sued in its own name does not mean that the attorney general cannot ever represent that agency or that the attorney general needs express prior authorizations to represent that agency. The attorney general may represent such an agency without any affirmative authorization to do so as long as that agency does not object to the representation. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

A demand by opposing parties that they be provided with written authorization from both the two government agencies that permit the FSM Department of Justice to represent each of the agencies is meritless and must be rejected. Arthur v. Pohnpei, 16 FSM R. 581, 591 (Pon. 2009).

Whereas the Pohnpei Division of Personnel, Labor and Manpower Development may issue orders and decisions, the Treasury Director has the final decision, and to give meaning to that finality, the Director's powers include issuing any orders necessary to arrive at and give effect to the decision. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Since the Pohnpei Residents Employment Act of 1991 does not solely empower the Division of PL&MD to hold hearings, and since it does vest the power of the final decision in the Director, it follows both that the hearing before the Director was legitimate pursuant to the Act, and that there was a legitimate hearing pursuant to the Act. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

An unconstitutional statute may not be redeemed by voluntary administrative action. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute=s reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

When the FSM civil rights statute is not as expansive as 42 U.S.C. ' 1988 because it allows

an attorney=s fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney=s fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep=t of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

52 F.S.M.C. 146 does not provide for administrative remedies or administrative appeals of any kind in abandonment of employment cases. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

The Public Service System Act delineates procedures that must be followed in terminating an employee for unsatisfactory performance and mandates that no dismissal or demotion of a permanent employee is effective until the management official transmits to the employee a written notice setting forth the specific reasons for the dismissal or demotion and the employee=s rights of appeal and it further mandates that any regular employee who is dismissed may appeal through an administrative review process. A crucial part of the administrative review process is a hearing before an ad hoc committee, and subsequent preparation of a full written statement of findings of fact. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

A quorum is defined as the minimum number of members who must be present for a deliberative assembly to legally transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

The commonly recognized definition of a quorum is that it is such a number of a body as is competent to transact business in the absence of the other members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

When three of the five appointed Social Security Board members are present this constitutes a valid quorum or a simple majority, and when, in adding the *ex officio* administrator, four out of the six total members are in attendance, it gives the Board valid authority to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The Social Security Board is competent to execute its duties and responsibilities with the absence of two of the total five members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

When three members are present along with the Administrator, the Social Security Board is competent to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Since the Executive Director of the Department of Education is an office uniquely created by the Chuuk Constitution, and since both the Chuuk Constitution and the applicable statute provide the sole means by which an Executive Director may be removed, the court must conclude that the general statutory provisions of the Administrative Procedures Act do not apply to the removal of the head of the Education Department. When it comes to the Executive Director=s removal, there is no higher administrative agency than the Board of Education. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648-49 (Chk. S. Ct. Tr. 2015).

All College of Micronesia employment contract disputes are to be treated as a grievance, subject to the mandatory grievance procedure which has two components: the informal and the formal. The aggrieved employee must first pursue the grievance informally, and if the efforts to resolve the grievance through the informal procedure have failed, the aggrieved employee may proceed to the formal grievance procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

A former employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the employee was a public service system member, especially if the grievance was pending at the time the employee left the public service system since access to the administrative procedure is not precluded even though the aggrieved party is no longer a public service system employee. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

An administrative body has no more license to deny jurisdiction than to usurp it. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

A state agency has only such rights, powers, and duties as the state legislature sees fit to bestow upon it through a duly enacted statute. Thus the legislature may, through another duly enacted statute, alter or may revoke any of those rights, powers, and duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

A state legislature that has created a commission by statute can abolish that commission by statute, just as it could, by statute, abolish most any governmental agency that it has created by statute, except those agencies which the state's constitution requires it to create. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 & n.8 (Chk. 2019).

An administrative agency action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

When, because the court referred the matter for administrative review, the plaintiff had an opportunity to vindicate its rights and the Secretary reevaluated his previous decisions and reversed himself, the error was corrected through the administrative review process, which is consistent with the procedure's purpose. The court thus cannot find a reason to award the plaintiff damages or attorney's fees, especially when the plaintiff waited a year before exercising its rights under the statute, which greatly increased its attorney's fees due to the need to obtain

injunctive relief. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634-35 (Pon. 2020).

– Administrative Procedure Act

The FSM Supreme Court finds within the Administrative Procedure Act, 17 F.S.M.C. '' 101-113, the necessary flexibility to expedite review of an administrative proceeding. Olter v. National Election Comm'r, 3 FSM R. 123, 128 (App. 1987).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA=s judicial review provisions are inapplicable to appeals from denial of such petitions. Olter v. National Election Comm'r, 3 FSM R. 123, 130 (App. 1987).

The APA enacted by the Congress of the Federated States of Micronesia is quite similar to the United States Administrative Procedure Act, but differs in that the FSM's APA imposes more affirmative obligations and requires the court to make its own factual determinations. Olter v. National Election Comm'r, 3 FSM R. 123, 131 (App. 1987).

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

When the Secretary denied an application for a foreign investment permit without delivering notice of his action, made no statement of the reasons in support of his denial, and failed to report to the President, the decision was made without substantial compliance with the procedures required by law and was therefore unlawful. Michelsen v. FSM, 5 FSM R. 249, 254-55 (App. 1991).

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

The principle of exhaustion of administrative remedies requires that a plaintiff obtain a final judgment before appeal, and that failure to do so will bar the plaintiff's claims; more specifically,

Pohnpei state law provides that employers, employees, or any other persons who are adversely affected by orders or decisions issued without a hearing have the right to a hearing upon request. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

Trust Territory Code Title 17 is retained as Chuuk state law through the Chuuk Constitution's Transition Clause. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.1 (Chk. 2011).

The Administrative Procedures Act applies to all agency actions unless explicitly limited by a Congressional statute, and significantly, it applies even if the enabling act does not mention it. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Although a hearing officer has the discretion to decide which recording method to use, stenographic or recording machine, the hearing officer does not have the discretion to altogether fail to make a record of the hearing. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

At the hearing officer's discretion, evidence may be taken stenographically or by recording machine. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

The Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise, and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

Since the Administrative Procedures Act applies to all agency action unless Congress by law provides otherwise, it applies to the Social Security Administration because no part of the Social Security Act provides otherwise. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 415 (App. 2018).

53 F.S.M.C. 703 delegates to the Social Security Administration authority to promulgate regulations and provides that the Board may, pursuant to the Administrative Procedures Act, adopt, amend, or rescind regulations for the administration of the Social Security law. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise, and it applies to the Social Security Administration appeals because the Social Security Act does not provide otherwise. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492-93 (Kos. 2018).

When a plaintiff successfully creates a presumption, he not only satisfies his burden of going forward but also shifts that burden to the defendant. The defendant then must rebut the presumption to satisfy his burden of going forward. The burden of persuasion normally remains on the plaintiff for his claim throughout the trial. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

Since the court can compel agency action unlawfully withheld or unreasonably delayed, the court, in such situations, can order that a person's entry permit be renewed as of the date when his last entry permit expired. Macayon v. FSM, 22 FSM R. 544, 555 (Chk. 2020).

The right to appeal a decision under the Education Code is set forth in 40 F.S.M.C. 114, which provides for administrative appeals under 17 F.S.M.C. 108-113. The statutes do not require that applicants for administrative relief be given notice of their right to appeal an adverse decision, but personal notice is required of all hearings after a petition for administrative review is filed. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 633 (Pon. 2020).

A letter seeking clarification about the criteria used to assess a college=s faculty and curriculum, the constituents and qualifications of the evaluation taskforce, and the legality of certain agreements, and that offered to discuss the report and findings, does not constitute a petition for a review hearing, which would trigger the requirement of personal notice of hearings. Nor does a telephone call asking "Why are you doing this?" constitute such a petition. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634 (Pon. 2020).

– Exhaustion of Remedies

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

Although not listed in Civil Rule 8(c) failure to exhaust administrative remedies is an affirmative defense. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

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

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

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

The doctrine of exhaustion of administrative remedies requires that no one is entitled to bring a land dispute to court until the Land Commission has been given a chance to decide the case because the Land Commission is the proper forum for the determination of land

ownership. Choisa v. Osia, 8 FSM R. 567, 569 (Chk. S. Ct. Tr. 1998).

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

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

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

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

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

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

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

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

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

A defense that a plaintiff failed to exhaust its administrative remedies, but which does not specify precisely what administrative procedures would be involved and which was not pled, is thus waived. AHPW, Inc. v. FSM, 12 FSM R. 114, 123 (Pon. 2003).

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

An exception to the requirement of exhausting administrative remedies first is if to do so would be futile. Wiliander v. National Election Dir., 13 FSM R. 199, 203 n.2 (App. 2005).

Failure to exhaust administrative remedies is an affirmative defense. Thus, the plaintiff is not required to plead and prove that it has exhausted its remedies. Rather, the burden to plead and prove the defense falls upon the defendant. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

When the statute provides that disciplinary actions taken in conformance with it shall be in no case subject to review in the courts until the administrative remedies therein have been exhausted, but when the plaintiff's termination was not the result of a disciplinary action but was either because the plaintiff held a position where he served at the governor's pleasure or that the proper Public Service System procedures were not used to hire the plaintiff, the lawsuit does not fall within the statute's reach and the case will not be dismissed for failure to exhaust administrative remedies. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

It is not necessary to exhaust one=s administrative remedies before filing suit when to do so would be futile. Naka v. Simina, 13 FSM R. 460, 461 (Chk. 2005).

When an administrative remedy is provided by statute, relief ordinarily must not only be sought initially from the appropriate administrative agency but such remedy usually must be exhausted before a litigant may resort to the courts. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157-58 (Pon. 2006).

An appeal from an administrative agency must be started within the established statutory time period. This has the salutary effect of permitting resolution by the administrative agency, which may either satisfy the aggrieved party or mollify his concerns, thus conserving scarce judicial resources. The only exception to the requirement to exhaust this remedy first is if to do so would be futile. Sipenuk v. FSM Nat=l Election Dir., 15 FSM R. 1, 5 n.2 (App. 2007).

The doctrine of exhaustion of remedies requires that a potential plaintiff follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision before bringing the dispute to the attention of the judiciary. It is incumbent on parties to exhaust administrative procedures concerning their disputes as designated by applicable state law before coming to court, unless and until the state law is judged invalid. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

Closely related to the requirement of exhausting all administrative remedies before seeking

judicial redress is the doctrine of res judicata, which bars the relitigation by parties or their privies of all matters that were or could have been raised in a prior action that was concluded by a final judgment on the merits that has been affirmed on appeal or for which time for appeal has expired. Once a plaintiff availed himself of the administrative remedies available for claims under Pohnpei state law, he was obligated to exhaust those remedies as provided by Pohnpei state law before filing suit in the FSM Supreme Court. When the plaintiff failed to exhaust these remedies by failing to appeal the Pohnpei administrative decision, his claims for unpaid wages, overtime, wrongful termination and criminal penalties are barred as a matter of law. Smith v. Nimea, 16 FSM R. 186, 190 (Pon. 2008).

When an employee has made no attempt to seek redress through the administrative procedure although she apparently did seek payment directly from the Department of Administrative Services, which is not part of the administrative grievance procedure, she has not exhausted her administrative remedies before she filed suit because neither the Department of Administrative Services nor its Director is the arbiter of administrative grievances. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

An employee has not shown that trying to obtain relief for unpaid wages through the administrative process would have been futile when the only evidence is the Director of Administrative Services's letter that applied only to employees in another department whose paychecks were not processed since there is no evidence that funds were not available to pay employees in the employee's department or that liability would be denied for any just claim for unpaid wages on the ground no funding was then available, especially since a claimed inability to pay is not a defense to liability. Thus, whether the state had funds to pay has no bearing on whether it is liable for payment. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Exhaustion of administrative remedies is ordinarily a prerequisite for judicial jurisdiction. This rule is a wholesome one and an aid to the proper administration of justice since it prevents the transfer to courts of duties imposed by law on administrative agencies. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Absent a showing that the election commission had failed to take meaningful action on their complaint since the court=s remand, the court could not take jurisdiction over the remanded election contest since, if the court had taken jurisdiction over the merits of the case before administrative remedies had been exhausted, it would have circumvented the power vested in the election commission to have primary jurisdiction over election contests and the court's rulings would have been subjected to appeal for lack of jurisdiction when administrative remedies had not yet been exhausted. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 517 (Chk. S. Ct. App. 2009).

The principle of exhaustion of administrative remedies requires that a plaintiff obtain a final judgment before appeal, and that failure to do so will bar the plaintiff's claims; more specifically, Pohnpei state law provides that employers, employees, or any other persons who are adversely affected by orders or decisions issued without a hearing have the right to a hearing upon request. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

If the Director had jurisdiction, the plaintiff's claims are statutorily barred for his failure to appeal the Director's decision to the Pohnpei Supreme Court trial division within 15 days, but if the Director had no jurisdiction, then the plaintiff has clearly failed to exhaust his administrative

remedies, meaning that the plaintiff may not yet come to court on the claims for unpaid wages, overtime and wrongful termination. Smith v. Nimea, 17 FSM R. 284, 288 (Pon. 2010).

Failure to exhaust administrative remedies is an affirmative defense which a defendant must plead and prove. But when a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

When Chuuk has acknowledged that any further pursuit by the employee of his administrative remedies would be futile, Chuuk cannot, since futility is a legal exception to the exhaustion of administrative remedies doctrine, prevail on its defense that the employee has failed to exhaust his administrative remedies or on the ground that the court lacks subject-matter jurisdiction because that ground was based on the failure to exhaust his administrative remedies. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

Administrative remedies provided for by statute do not have to be exhausted when to pursue them would be futile, particularly when the claims are not for money damages but seek declaratory and injunctive relief. Perman v. Ehsa, 18 FSM R. 452, 455 (Pon. 2012).

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review are both affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The Kosrae State Court has original jurisdiction in all cases except those within the exclusive and original jurisdiction of inferior courts and it has jurisdiction to review all decisions of inferior courts. Since no inferior court is assigned original jurisdiction over state employee grievances, the Kosrae State Court has jurisdiction over state employees' claims for pay once they have exhausted their administrative remedies. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Failure to exhaust administrative remedies is an affirmative defense that ordinarily must be pled or it is deemed waived. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The movants have not shown that there are any jurisdictional steps that the plaintiff failed to take or any jurisdictional deadlines that it failed to meet when the statute and attendant regulations that the movants rely on apply only to Pohnpei state government procurement contracts – bidding for contracts where the vendor bidders are competing to sell goods or services – personal property and, in this case, the bidders were not seeking to sell anything to Pohnpei, but were seeking to acquire real estate rights – to lease government land and fish processing facilities (not personal property) from the state government. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656-57 (Pon. 2013).

A plaintiff does not have to exhaust one's administrative remedies before filing suit when to do so would be futile. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 657 (Pon. 2013).

Exhaustion of remedies is the doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine=s purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

The exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Once those procedures have been completed, however, the plaintiff is entitled to judicial review, under the appropriate standard, when there is a "non-frivolous dispute." Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, the court may dismiss the petition without prejudice allowing the plaintiff to refile so that the litigation's pleading might accurately reflect the administrative deficiency with new and accurate pleadings. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

Exhaustion of administrative remedies is ordinarily a prerequisite for judicial jurisdiction and until those remedies are completed the court expressly cannot review the action. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

The express language of Title 52 creating the National Public Service System Act, requires that the exhaustion of remedies doctrine be applied. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

No statute requires College of Micronesia employees to exhaust their administrative remedies before seeking judicial review. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

As a corollary to the exhaustion of remedies doctrine, the courts have created the doctrine of primary jurisdiction. This doctrine should not be confused with the exhaustion of remedies, but the goals of the two are the same. Primary jurisdiction is a doctrine of common law, wholly court-made, that is designed to guide a court in determining whether and when it should refrain from or postpone the exercise of its own jurisdiction so that an agency may first answer some question presented. The primary jurisdiction doctrine arose in recognition of the need for an orderly coordination between the functions of court and agency in securing the objectives of their often overlapping competency as agencies and courts often have concurrent jurisdiction. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered

a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at the plaintiff's election, but public policy nevertheless requires that the matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

When the court=s jurisdiction has been limited by the exhaustion of remedies doctrine, the court can only hear a petition for review of the agency action and the plaintiff can only argue that the agency action does not stand up under the proper administrative standard of review, which may be extremely limited according to the prescribed standard for review. But under the primary jurisdiction doctrine, the plaintiff can argue that the agency action cannot stand up under a petition, or request a de novo trial on the common law claim which can be decided in a way that leads to a result different from that asserted by the agency since the plaintiff is not bound by the standards of review which often require the court to apply a heightened level of deference to the agency's decisions. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Exhaustion of remedies is the doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, however, the court will dismiss the petition without prejudice, allowing the plaintiff to refile so that the pleadings might accurately reflect the administrative deficiency. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

An aggrieved employee is entitled to the administrative process regardless of his or her current employment status if it emerges from an employment dispute that was existing at the time the employee left, or if the termination itself is the reason that the person left the public service system. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

It is without jurisdictional significance that a person may, or may not be, covered under the Public Service System Act in her current employment position. It is enough that she indisputably was and that she properly began that grievance process and has the right to see it through to completion. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

A seaman employed by the FSM is a contract employee and therefore does not fall under the purview of Title 52 and would not be required to have his grievance reviewed at the administrative level before filing suit in the FSM Supreme Court. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

In cases where exhaustion of remedies is not required by statute, the exhaustion requirement is discretionary with the courts, rather than an absolute bar to judicial consideration, and must be applied in each case with an understanding of its purposes and of the particular administrative scheme involved. Where justification for invoking the doctrine of exhaustion of administrative remedies is absent, the doctrine's application is unwarranted and will be waived. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, ' 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

The statute of limitations cannot be said to have continued to run as against a public employee=s claim when the administrative decision was issued in his favor and the administrative grievance process was still pending as to a determination of damages. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

Personnel disciplinary actions are in no case subject to review in the courts until the statutory administrative remedies have been exhausted. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

Although it is not an affirmative defense specifically listed in Civil Procedure Rule 8(c), the failure to exhaust administrative remedies is usually considered an affirmative defense. That is presumably because it constitutes other matter constituting an avoidance or affirmative defense. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

The failure to exhaust administrative remedies is an affirmative defense that ordinarily must be pled in the answer or it is deemed waived. Basu v. Amor, 22 FSM R. 557, 563 (Pon. 2020).

When certain facts are missing and evidence about them, which the court would expect would be developed through a thorough administrative evidentiary hearing, would be helpful for an informed decision, summary judgment may be denied and administrative hearing ordered. Basu v. Amor, 22 FSM R. 557, 566-67 (Pon. 2020).

A government official's decision or a government agency's decision, that an aggrieved party considers to be "wrong" or "incorrect," on the law or the facts does not automatically entitle that party to skip or avoid administrative proceedings and head straight to court alleging a civil rights

violation so that the court will apparently have jurisdiction and the administrative agency will not. Thus, an additional pleading of a civil rights cause of action will not automatically preclude a remand (and a stay) to exhaust administrative proceedings. Basu v. Amor, 22 FSM R. 557, 567-68 (Pon. 2020).

An administrative hearing would not be futile when, at a minimum, it would require further evidence to address the unanswered questions the court has set out, and those answers may change the current result. Basu v. Amor, 22 FSM R. 557, 568 (Pon. 2020).

– Judicial Review

It is inappropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional when the administrative steps essential for the court's review of employment terminations have not yet been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R. 201, 202 (Pon. 1982).

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

When a Public Land Authority has erred procedurally, but there is no suggestion of bad faith or substantive violations by the Authority, the FSM Supreme Court may appropriately employ the doctrine of primary jurisdiction to remand the public land issue to the Authority for its decision. Etpison v. Perman, 1 FSM R. 405, 429 (Pon. 1984).

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

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

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

The FSM Supreme Court finds within the Administrative Procedures Act, 17 F.S.M.C. '' 101-113, the necessary flexibility to expedite review of an administrative proceeding. Olter v. National Election Comm'r, 3 FSM R. 123, 128 (App. 1987).

The fact that some provisions of the APA are overridden by the National Election Code does not constitute either an explicit or implicit statement that the judicial review provisions of

the APA are partially or wholly inapplicable to appeals from decisions of the commissioner. The APA is not an all or nothing statute. That the APA's timing provisions do not apply to recount petitions does not mean the APA's judicial review provisions are inapplicable to appeals from denial of such petitions. Olter v. National Election Comm'r, 3 FSM R. 123, 130 (App. 1987).

The FSM Supreme Court need not dwell upon the apparent conflicts between two lines of cases in the United States concerning the scope of judicial review of administrative actions, but should search for reconciling principles which will serve as a guide to court within the Federated States of Micronesia when reviewing agency decisions of the law. Olter v. National Election Comm'r, 3 FSM R. 123, 132 (App. 1987).

It is appropriate for courts to defer to a decision-maker when Congress has told the courts to defer or when the agency has a better understanding of the relevant law. Olter v. National Election Comm'r, 3 FSM R. 123, 133, 134 (App. 1987).

If an agency decision is a considered judgment arrived at on the basis of hearings, a full record, and careful reflection, courts are more likely to rely on the knowledge and judgment of the agency and to restrict the scope of judicial review. Olter v. National Election Comm'r, 3 FSM R. 123, 134 (App. 1987).

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

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

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 401 (Kos. S. Ct. Tr. 1988).

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

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Semes v. FSM, 4 FSM R. 66, 71 (App. 1989).

The Administrative Procedure Act judicial review provisions do not apply to statutes enacted by the Congress of the Federated States of Micronesia to the extent that those statutes explicitly limit judicial review. Semes v. FSM, 4 FSM R. 66, 72 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. Semes v. FSM, 4 FSM R. 66, 72 (App. 1989).

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

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. Michelsen v. FSM, 5 FSM R. 249, 252-53 (App. 1991).

The standard of review of an agency decision is to determine whether the action was lawful. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

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

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

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM R. 28, 30 (Chk. 1993).

The Administrative Procedures Act provides for judicial review of administrative acts and applies to all agency actions unless explicitly limited by a Congressional statute. It mandates the court to "conduct a de novo trial of the matter," and to "decide all relevant questions of law and fact." Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Judicial review of agency actions must first be sought in the trial division unless there is a specific statute which provides otherwise. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138-39 (App. 1993).

The public policy against extended litigation does not mandate a direct appeal to the appellate division from an agency action since the statutory scheme unambiguously requires pursuit of remedies in the trial division first, and the trial division proceeding may resolve the matter. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 139 (App. 1993).

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

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

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

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

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

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

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

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

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence,

including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

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

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

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

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

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

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

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

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

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

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by

substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When there was no formal hearing requiring transcription, the court may shorten the time before oral argument on judicial review of an agency decision. International Bridge Corp. v. Yap, 9 FSM R. 362, 366 (Yap 2000).

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

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

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

The standard for judicial review of an agency decision under 10 Y.S.C. 165 is the court may reverse or modify the agency's decision, or remand the case for further proceedings if the petitioner's substantial rights have been prejudiced because the agency's decision is a) in violation of applicable constitutional or statutory provisions; b) in excess of the agency's statutory authority; c) made upon unlawful procedure; d) affected by other error of law; e) clearly

erroneous in view of the reliable, probative and substantial evidence in the whole record; or f) arbitrary, capricious, or characterized by abuse of discretion. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

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

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

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

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

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

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

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

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

S. Ct. Tr. 1999).

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

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

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

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

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

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

If an agency decision is a considered judgment arrived at on the basis of hearings, a full record, and careful reflection, courts are more likely to rely on the agency's knowledge and judgment and to restrict the scope of judicial review. O'Sonis v. Sana, 9 FSM R. 501, 503 (Chk. S. Ct. Tr. 2000).

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

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

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

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

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

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

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

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

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

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State

Election Comm=n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

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

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

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

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

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

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

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae

tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

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

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of judicial review of final decisions made under the State Public Service System is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The court is authorized to compel, or hold unlawful and set aside agency actions. Jackson v. Kosrae, 11 FSM R. 197, 199 (Kos. S. Ct. Tr. 2002).

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

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

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

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

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

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

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

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

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

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

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

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

Tr. 2003).

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

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

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

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

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

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

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60 day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer.

The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

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

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

When a state administrative agency asks that the FSM Supreme Court not exercise jurisdiction in a case because the case involves a question about land, and land issues are best (and traditionally) left to the state court, but when a deeper analysis reveals that the case is not fundamentally a land case, but rather one in which the court is being asked to review an agency's action and determine whether that action was lawful from an administrative or procedural point of view, not a substantive one, the question presented is not whether the plaintiff is entitled to the assignment of the lease in question, but rather whether the board possessed the authority to reconsider its decision and, if so, did it do so in a manner that recognized plaintiff's rights under the FSM Constitution. In such a case, the FSM Supreme Court does not lack subject matter jurisdiction, and the plaintiff's complaint will not be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

When, through the discovery process, further briefing, and a trial, a plaintiff could show that an agency acted in a manner that violated its statutory duties and when its motion to dismiss fails to set forth the applicable laws and administrative rules that dictate how it conducts business, the court is disinclined to decide as a matter of law that its actions were authorized, lawful, and procedurally correct and will allow the claim to remain, allow further briefing and discovery, and then entertain a motion for summary judgment. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 91 (Pon. 2003).

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

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

When a plaintiff files a lawsuit against a Pohnpei state employee or public officer arising out of an act or omission within the scope of his or her public duties or employment either in his or her official capacity or as an individual, and that lawsuit alleges any tort, tax or contract claims, claims for injuries or damages, or actions which seek injunctive relief or writ of mandamus, the state itself must also be named as a defendant, but in an appeal from an administrative agency

decision, the plaintiff is permitted, but not required, to name the state as a party to the action. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 185 (Pon. 2003).

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

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

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

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

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

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM R. 280, 284-85 (App. 2003).

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

(App. 2003).

It is standard appellate procedure (as used in judicial review of administrative decisions) to file briefs and hear oral argument on them. This permits the appellate parties to argue errors of law or other deficiencies in the proceeding below and to direct the court's attention to those parts of the record that support their contentions. Briefs are not evidence, and a hearing on them is not a trial. Anton v. Cornelius, 12 FSM R. 280, 286-87 (App. 2003).

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

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

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

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

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

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

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce

additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 636 (Kos. 2004).

By failing to respond to Social Security's motion in limine that seeks to preclude the plaintiff from adducing any further evidence on appeal beyond that which is part of the record of proceedings before the Social Security Board, the plaintiff has not shown that there were reasonable grounds for failure to adduce competent, material, and substantial evidence before the Board and that this evidence should be (but is not) part of the record of the proceedings, and thus the motion will be granted. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 637 (Kos. 2004).

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

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 152 (Kos. 2005).

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

An appeal from an administrative agency must be started within the established statutory time period. This has the salutary effect of permitting resolution by the administrative agency, which may either satisfy the aggrieved party or address his concerns, thus conserving scarce judicial resources. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on

the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

The Kosrae State Court, in reviewing Land Commission appeals, considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, the court cannot substitute its judgment for the Land Commission=s well-founded findings, but questions of law are reserved to it. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 419-20 (Kos. S. Ct. Tr. 2005).

Whether the Land Commission properly considered certain evidence is an issue that the Kosrae State Court may properly consider under its standard of review, and if the appellant should prevail, it can order a remand. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the Land Commission has not followed statutory notice requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the determination of ownership as void and remand to Kosrae Land Court for further proceedings. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When the plaintiffs have not shown that the Land Commission committed an error of law or that its findings lacked a substantial factual basis, the court will accept the Land Commission's finding that no part of the tower is on the plaintiffs' property. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

In reviewing a Land Commission decision, the Kosrae State Court considers whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues, and has reasonably assessed the evidence presented. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

The proper standard for judicial review of agency (including Land Commission) decisions is that the reviewing court shall declare unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

The clearly erroneous standard is met either when the factual finding was not supported by substantial evidence in the record, or when the factual finding was the result of an erroneous conception of the applicable law, or when after a consideration of the entire record the appellate court is left with a definite and firm conviction that a mistake has been made. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

Since the trial court stated that it was using a "clearly erroneous" standard of review on the Land Commission's findings, it would have had to examine, as one of the three possible ways to satisfy the clearly erroneous standard, whether the Land Commission decision was supported by substantial evidence in the record, the standard that the statute requires. Thus, although it may not have correctly named the standard, the trial court did use the proper standard of review as part of its review. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When the matter is remanded to the trial court for it to rule on whether the lineage members consented or acquiesced to the sale of the land in question and if the trial court is unable to determine whether the requisite consent or acquiescence was shown in the Land Commission proceeding or determines that the record is inadequate to make that determination, the trial court shall then remand the matter to the Land Commission for it to make further findings of fact on whether such consent or acquiescence or ratification was made. The Land Commission may rely on the record and transcript and may take further evidence if it is necessary to make the inquiry. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

The Chuuk Constitution provides that the Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law, and the constitutional provision is implemented by a similar statutory provision. These general provisions about appeals from agency decisions would carry weight if other, specific constitutional provisions did not, or do not, apply. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

By statute, appeals from determinations of ownership by the Land Commission are treated and effected in the same manner as an appeal from the Chuuk State Supreme Court in a civil action. Thus, the Chuuk Rules of Appellate Procedure are the rules to be followed in appeals from Land Commission determinations. Liwis v. Rudolph, 15 FSM R. 245, 248 (Chk. S. Ct. Tr. 2007).

When the appellants have wholly failed to comply with the proper procedure and the court, their continuing failure to comply with the court's orders justifies dismissing their appeal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

Where the appellants took no action beyond filing their notice of appeal on October 17, 2001, there is good ground to dismiss the appeal because an appeal may be dismissed when no action is taken beyond filing a notice of appeal, when no transcript is ordered and no certificate filed to the effect that no transcript would be ordered, and when notice was served, setting a date of oral argument and for filing appellant's opening brief, that stated that failure to do so would be ground for dismissal. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

When the appellants took no action beyond filing their October 17, 2001 notice of appeal; when a November 19, 2003 order placed on the appellants the responsibility for ordering and obtaining a transcript of the Land Commission proceedings; when the November 19, 2003 order required the appellants to comply with the Appellate Procedure Rules 10 and 11 no later than December 19, 2003; when the appellants had every opportunity to comply with the November 19, 2003 order since the Land Commission transcript had been transmitted to the court on October 24, 2001, and was available for them to order and obtain after that date; when a March

28, 2007 order restated the appellants= obligation to comply with the November 19, 2003 order; when, at a April 2, 2007 status conference, the appellants were reminded of their obligation to comply with the November 19, 2003 order; when a May 16, 2007 order scheduling the submission of briefs and setting the hearing date on the appeal was based on both parties' agreement at the April 2, 2007 status conference; and when the appellants did not comply with the May 16, 2007 order and wholly failed to file a brief for their appeal and did not request an extension of time to file their brief, their appeal will be dismissed. Liwis v. Rudolph, 15 FSM R. 245, 249 (Chk. S. Ct. Tr. 2007).

The Chuuk State Supreme Court's authority to dismiss a case on appeal on procedural grounds under the Chuuk State Rules of Appellate Procedure is purely discretionary. Liwis v. Rudolph, 15 FSM R. 245, 250 (Chk. S. Ct. Tr. 2007).

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court. The reviewing court shall hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Ruben v. FSM, 15 FSM R. 508, 513 (Pon. 2008).

When a second rescheduling gave the importers and any third-party witnesses more than 30 days to make travel and other arrangements to appear at the hearing and was done with the express agreement of the importers' counsel, the importers were provided sufficient opportunity to present their case and the FSM's refusal to reschedule the hearing for a third time was not arbitrary, capricious, or an abuse of discretion. Ruben v. FSM, 15 FSM R. 508, 515 (Pon. 2008).

An agency action must be set aside when the action was without substantial compliance with the procedures required by law. Ruben v. FSM, 15 FSM R. 508, 516 (Pon. 2008).

When a letter does not set forth the agency's required findings of fact, it does not qualify as a full written statement of the hearing officer's findings of fact and his decision, and in the absence of a full written statement of findings of fact and an explanation of how the hearing officer arrived at his decision, the court has no reasonable basis upon which to review the agency action. Because the agency failed to substantially comply with the procedural requirement, the court will set aside its administrative action. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

Although a hearing officer has the discretion to decide which recording method to use – stenographic or recording machine – the hearing officer does not have the discretion to altogether fail to make a record of the hearing and its failure to substantially comply with this procedural requirement is yet another reason an agency action must be set aside. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

When an agency failed to substantially comply with the procedures required by law through the hearing officer=s failure to prepare a full written statement of his findings of fact and his decision and the agency=s failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. Ruben v.

FSM, 15 FSM R. 508, 517 (Pon. 2008).

When there are discrepancies in the evidence, which result in a dispute of material facts, the court will decline an invitation to conduct a *de novo* review and conclude the matter by summary judgment. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

Under the common law rule known as the doctrine of primary jurisdiction, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the doctrine of primary jurisdiction in the hope that by remanding matters to an administrative body, the administrative determination will obviate the need for further court action or will make possible a more informed and precise determination by the court. Ruben v. FSM, 15 FSM R. 508, 518 (Pon. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

A claims denial made before the due date to submit supporting documents is arbitrary and

capricious and will be vacated by the court and remanded for further proceedings. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

A person adversely affected or aggrieved by a final administrative decision is entitled to judicial review of that decision in the Kosrae State Court which shall conduct a de novo trial of the matter; which shall decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action; and which may receive in evidence any or all of the record from the administrative hearing that is stipulated by the parties. Although the court holds a new trial, the agency action is entitled to at least some deference regardless of the substantive grounds for the appeal and will not be set aside it unless it is 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. A plaintiff generally has the burden of proving their case and thus, a plaintiff challenging an administrative decision must prove it meets one of the five criteria before the decision will be held unlawful and set aside. Palsis v. Kosrae, 16 FSM R. 297, 305, 313 (Kos. S. Ct. Tr. 2009).

Since the court is required to set aside agency action if unwarranted by the facts, the court must also consider the additional evidence submitted at the trial de novo. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

If the agency abused its discretion, or acted arbitrarily or capriciously, then the employee dismissal should be set aside. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

The standard is that a dismissal can occur if it is done for the good of the public service and the court will set aside the agency decision if it finds that the decision was arbitrary, capricious, and abuse of discretion or that the decision was unwarranted by the facts. When, in analyzing the facts, the court finds that each complaint and factor as a reason for dismissal alone does not rise to the level that would allow a management official to terminate an employee, but when the culmination of all of the factors and complaints does rise to a level where dismissal was a viable option and at the management official's discretion, the good of the public service was served by her dismissal since the health care industry is vital to the Kosrae community and nurses affect the well being of all citizens of Kosrae. Palsis v. Kosrae, 16 FSM R. 297, 314-15 (Kos. S. Ct. Tr. 2009).

Since, in an election contest appeal, the Chuuk State Supreme Court appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding and since the Election Law itself does not prescribe rules of procedure, the court has, when necessary, followed procedures analogous to those in the Civil Procedure Rules. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

Matters of statutory interpretation are issues of law that the court reviews de novo. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest appeal in the Chuuk State Supreme Court appellate division, the court will hold a trial on an issue of fact. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate

division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

When the appellants dispute the Election Commission's authority to nullify the results of a municipal mayoral election and reschedule the election, the appellants are not contesting the results of any election, especially since an appellant was the first election's declared winner; rather, the appellants dispute the state election commission's authority to nullify the first election's results and order a new election. Since the Election Law does not contemplate Appellate Division jurisdiction over disputes that arise outside the timeframe set by section 127 and since the appellants are not appealing from an election commission decision on an election complaint that was filed in compliance with section 127, the appellate court has no jurisdiction over the matter pursuant to sections 130 and 131 of the Election Law, which are the only provisions in the Election Law that provide for original jurisdiction over election matters in the appellate division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542-43 (Chk. S. Ct. App. 2009).

When there were no valid certificates of title for the land at the time of the Land Commission decision, the decision was a determination from which any party aggrieved thereby had 120 days to appeal, and, as such, the Chuuk State Supreme Court's trial division could exercise review jurisdiction over a timely appeal from that Land Commission decision, and the appellate division could exercise review jurisdiction over a timely appeal from the trial division review decision. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

The issuance of a certificate of title is generally not appealable, but since the Land Commission is not authorized to issue certificates of title until after the 120-day appeal period has passed or until after an appeal has been duly taken and decided, certificates of title issued before then are prematurely issued and are thus invalid and may be canceled. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

It would have been futile for Chuuk public service system employees, who were forced to resign in December 2002 because they wished to be candidates in the 2003 election, to pursue their administrative remedies before proceeding to court. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations

and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director=s decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

When the statute subjects the finality of the Director's decision to judicial appeal, and when it directs that judicial appeals of the Director's order or decision must be made to the Pohnpei Supreme Court trial division within 15 days of the date of the decision or order, the statute creates a statutory obligation to appeal a decision to Pohnpei Supreme Court, and, as the statutory law governing the administrative review of labor contracts disputes, it is a necessary part of the administrative process. Smith v. Nimea, 17 FSM R. 125, 130-31 (Pon. 2010).

If the court were to take the plaintiff at his word that November 26, 2010 is the date of the demand for an immigration hearing, that 17 F.S.M.C. 109(4) obliges the court to view December 26, 2010 as the effective date of rejection, and that 51 F.S.M.C. 165 is now applicable, the court must deny his administrative appeal of the rejection because he filed his motion 15 days after December 26, 2010 and, under 51 F.S.M.C. 165(1), he had to make the appeal within 10 days following the date of the effective rejection. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

A party cannot file a civil action in anticipation of an adverse final agency decision and expect, without more, that that civil action works as an administrative appeal of the later-issued final agency decision. In order for a party to include an administrative appeal in a preexisting civil action, he must amend or request leave of court to amend his pleadings. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

Under both state and national law, the plaintiff's claims for wrongful termination and unpaid wages are not property before the FSM Supreme Court when, under state law, the plaintiff is either statutorily barred from asserting his claims for unpaid wages, overtime and wrongful termination due to his failure to appeal the Director's decision or if the Director was not the proper "Chief" of PL&MD, he is barred by the statute of limitations from further pursuing his claims for his failure to request administrative relief within six years of his employment's termination and when, under national law, he has failed to make a proper and timely appeal, which would have been to file a new civil action or request leave to amend his complaint by March 4, 2005. Smith v. Nimea, 17 FSM R. 333, 338 (Pon. 2011).

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

Disciplinary actions of government employees are not subject to judicial review until the administrative remedies have been exhausted and are not subject to such review thereafter except on the grounds of violation of law or regulation or of denial of due process or of equal protection of the laws. Poll v. Victor, 18 FSM R. 235, 238 (Pon. 2012).

Under Title 52, when the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory, and constitutional violations, review of the factual findings is limited to

determining whether substantial evidence in the record supports the administrative official's conclusion that a violation justifying termination has occurred. The court is thus required to uphold the President's findings of fact if there is substantial evidence in the record to support them. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

A finding of fact that is unsupported by substantial evidence is "clearly erroneous." A court determines that a finding is "clearly erroneous" when, although there is some evidence to support it, the reviewing court examines all of the evidence and is left with the definite and firm conviction that a mistake has been committed. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

The court will limit itself to reviewing the ad hoc committee's decision and not deal with the issue of job abandonment when the committee's decision is affirmed since there is no need for a review of a further ground for the employee's termination. Additionally, the employee was accorded his right to appeal and did so. If he was terminated for job abandonment he would have no right to appeal. Poll v. Victor, 18 FSM R. 235, 241 n.5 (Pon. 2012).

When the court has found substantial evidence in the record to support all three grounds for an employee=s termination and is not left with the definite and firm conviction that a mistake has been committed, no mistake was committed by the ad hoc committee's findings and recommendation, and the President=s affirmance. Poll v. Victor, 18 FSM R. 235, 243 (Pon. 2012).

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties but not a disciplinary action. Grievances are not disciplinary actions and Title 18 does not provide any limitations on the Kosrae State Court=s review of grievances or grievance appeals although the Kosrae State Court does not have jurisdiction to review grievances of employees who do not first comply with the required administrative procedure. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Where Kosrae does not argue that it offered certain evidence that the trial court improperly excluded, it cannot complain that all the evidence before the Director was not before the trial court when that court held a trial at which Kosrae would have had the opportunity to submit whatever evidence it thought relevant. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Kosrae's contention that the plaintiffs could not use the public service system appeals process because they were contract employees should mean that they could (or had to) file a court suit to obtain relief but if, Kosrae contends that they never became vice-principals, then they remained elementary school teachers and were thus public service system employees eligible to use the appeals process. Kosrae's reasoning is circular and leads nowhere. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The contention that there was not substantial evidence in the administrative record to support the trial court decision is baseless when the trial court judgment was on the merits after a trial de novo. Kosrae v. Edwin, 18 FSM R. 507, 513-14 (App. 2013).

Courts must afford considerable weight to an agency's construction of a statute that it administers when Congress has not directly addressed the precise question at issue, but when the legislative intent is clear and unambiguous, that is the end of the matter. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77-78 (Pon. 2013).

When the matter was already in the FSM Supreme Court before the employee-plaintiff sought a stay of the FSM court proceeding so that he could pursue state administrative relief, the employee-plaintiff could have appealed the adverse state administrative decision back to the FSM Supreme Court from the state administrative proceeding. But since he sought such relief and sought the court's permission, he should abide by the state administrative result when he did not appeal the administrative decision to either the Pohnpei Supreme Court or (back) to the FSM Supreme Court. His employer thus has the right to raise as a defense that the administrative decision is final on the issues it covered and that those issues can no longer be litigated in the FSM Supreme Court. Smith v. Nimea, 19 FSM R. 163, 170 (App. 2013).

Failure to timely appeal an agency decision is either jurisdictional or may be raised as an affirmative defense depending on the statute. Smith v. Nimea, 19 FSM R. 163, 170 (App. 2013).

Since an employee who abandons his position does not have the right to an administrative appeal, a court reviewing an agency decision to terminate a plaintiff's employment for reason of abandonment will be unable to limit its role to reviewing factual findings developed during an administrative appeal. A court evaluating the merits of an abandonment claim must instead conduct a trial *de novo* to determine whether there is substantial evidence to support an agency decision to terminate a plaintiff's employment for reason of abandonment. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

In reviewing a government employee's termination under Title 52, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

Under Title 52, since the FSM Supreme Court=s review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation of the kind justifying termination has occurred. The statute evinces a clear congressional intent that the courts avoid serving as finders of fact. When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact. Manuel v. FSM, 19 FSM R. 382, 386-87 (Pon. 2014).

When a discharged employee was denied an opportunity to engage in the administrative review process, the court is left without a record to review, and therefore the government=s decision to terminate the plaintiff's employment on the grounds of unsatisfactory performance is not supported by substantial evidence in the record. Manuel v. FSM, 19 FSM R. 382, 387 (Pon. 2014).

The court=s role is not to serve as a finder of fact substituting its judgment for that of the ad hoc committee and the President. Rather, the court's role is to determine whether the administrative review process was conducted in accordance with statutory guidelines and in a manner that protects the plaintiff's right to due process. Manuel v. FSM, 19 FSM R. 382, 387 n.2 (Pon. 2014).

If the government wants to terminate an employee for unsatisfactory job performance, it must follow the procedures established in the National Public Service System Act and accompanying regulations, including providing the employee with notice of his right to file an administrative appeal. If, after an administrative appeal, the employee is terminated for unsatisfactory performance then the employee may appeal to the FSM Supreme Court, and the court will evaluate the administrative appeal's record to determine if the decision to terminate the employee for unsatisfactory job performance is supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 387 n.3 (Pon. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

By statute, the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission is limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When a statute calls for judicial review but does not prescribe the standard to be employed, courts look to the Administrative Procedures Act for guidance. Those provisions, however, do not apply to the extent that those statutes explicitly limit judicial review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 553-54 (Pon. 2014).

17 F.S.M.C. 111(1) explicitly limits judicial review, but that limitation must be understood as a limitation on when a judicial review is appropriate. A request for judicial review may be made only by a person adversely affected or aggrieved by a final decision. 17 F.S.M.C. 111(2) does not limit judicial review to the administrative record because the statute explicitly calls for a trial "de novo." GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.1 (Pon. 2014).

The Administrative Procedures Act broadly applies to all agency actions unless explicitly limited by a Congressional statute. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.2 (Pon. 2014).

Title 17, which codifies the Administrative Procedures Act, applies to challenges of administrative decisions raised under Title 54, which codifies the tax law. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

The FSM Supreme Court must conduct a de novo trial of the administrative tax appeal, and must decide all relevant questions of law and fact. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 555 (Pon. 2014).

A de novo judicial review in the administrative law context is a term of art, and generally the court reviews the record with the presumption that the facts contained therein are correct. Thus, the court gives deference to the agency's prior decision and the challenger must show to a "preponderance" of the evidence that the agency was wrong. The challenger, however, may introduce any additional evidence into the judicial record, as well as any portion, or all of the administrative record for consideration. Ultimately, the agency record remains the focal point of the review, and often a full retrial is not necessary, under the de novo standard. Alternatively, under the doctrine of primary jurisdiction, the court may remand the fact finding omission to the administrative agency before conducting its judicial review. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 555-56 (Pon. 2014).

A request for a judicial review of an administrative decision regarding the tax code is appropriately filed in the Supreme Court trial division. Since there are no express statutory limitations on the admission of additional evidence or limitations of the court's subject matter, the Administrative Procedures Act applies, and the court will conduct a de novo review of the decision. Thus, all discovery requests must be honored. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 556 (Pon. 2014).

While it is a matter of some concern, whether the Land Commission will be able to decide the case in a timely manner because of certain vacancies on the Commission, it is not a ground on which the appellate court can base its decision whether to remand to the Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court trial division has jurisdiction to review the actions of any state administrative agency, board, or commission, as may be provided by law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Conclusory statements in the Board's resolution terminating the Executive Director present a difficulty because it gives the court no record to review so that the court can only guess at what formed the basis for the Board's conclusions. The court generally will not conduct a trial de novo to review an agency action. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When an agency action gives the court no record to review, the better course in most instances, and the most likely course of action is that the matter would be remanded to the administrative agency – in this case, the Board of Education – for it to give the terminated employee notice of which of her actions and omissions it considers might be grounds for her removal and to give her an opportunity to respond and explain or justify or rebut the allegations against her before it votes on whether to remove her. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the

court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The trial court's disposition of a Social Security appeal on the record is final, subject to review by the appellate division. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

As a corollary to the exhaustion of remedies doctrine, the courts have created the doctrine of primary jurisdiction. This doctrine should not be confused with the exhaustion of remedies, but the goals of the two are the same. Primary jurisdiction is a doctrine of common law, wholly court-made, that is designed to guide a court in determining whether and when it should refrain from or postpone the exercise of its own jurisdiction so that an agency may first answer some question presented. The primary jurisdiction doctrine arose in recognition of the need for an orderly coordination between the functions of court and agency in securing the objectives of their often overlapping competency as agencies and courts often have concurrent jurisdiction. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The primary jurisdiction doctrine arises when a claim is properly cognizable in court but contains some issue within the special competence of an administrative agency. Under the primary jurisdiction doctrine, courts may remand matters to administrative bodies that are familiar with the regulated activity at issue. Courts apply the primary jurisdiction doctrine in the hope that by remanding matters to an administrative body, the administrative determination will obviate the need for further court action or will make more possible a more informed and precise determination by the court. Under this doctrine, referral of the issue to the administrative agency does not deprive the court of jurisdiction; it has the discretion either to retain jurisdiction or to dismiss the case without prejudice. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The difference between the exhaustion of remedies doctrine and the primary jurisdiction doctrine is that exhaustion applies where the claim is cognizable by the administrative agency alone because Congress has expressly removed the subject matter from the court and replaced it with an exclusive administrative remedy. Primary jurisdiction, on the other hand, applies where a claim is originally cognizable in the court, and the administrative remedy is considered a cumulative remedy. Technically, under primary jurisdiction, either remedy may be pursued at

the plaintiff's election, but public policy nevertheless requires that the matter be first placed within the administrative body's competency. Ramirez v. College of Micronesia, 20 FSM R. 254, 262 (Pon. 2015).

The public policy reasons for requiring that a matter be first placed within the administrative body's competency include the uniformity and consistency in the regulation of business entrusted to a particular agency are secured and the judiciary's limited functions of review are more rationally exercised by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure. Although wrongful termination claims rarely involve complex or technical issues that are outside of the court's competence, policy reasons also include avoiding conflict, indications of legislative intent, and other factors, and there are many policy reasons to abstain even when administrators lack identifiable expertise because the purpose is simply to promote the uniform application of the law and a proper relationship between the agencies and the judiciary. Ramirez v. College of Micronesia, 20 FSM R. 254, 262-63 (Pon. 2015).

When the court=s jurisdiction has been limited by the exhaustion of remedies doctrine, the court can only hear a petition for review of the agency action and the plaintiff can only argue that the agency action does not stand up under the proper administrative standard of review, which may be extremely limited according to the prescribed standard for review. But under the primary jurisdiction doctrine, the plaintiff can argue that the agency action cannot stand up under a petition, or request a de novo trial on the common law claim which can be decided in a way that leads to a result different from that asserted by the agency since the plaintiff is not bound by the standards of review which often require the court to apply a heightened level of deference to the agency's decisions. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Even though, under the primary jurisdiction doctrine, petitioners can bring a separate common law claim, they must usually complete the agency procedure first before the court will entertain it. To do otherwise would interfere with the administrative process and undermine the particular advantages of the agency decision-making process that can generally resolve disputes in a less cumbersome and less expensive manner than is normally encountered at a trial in court. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

An aggrieved College of Micronesia employee's failure to appeal an adverse decision to the Board of Regents within the specified time limit, a required administrative step, is deemed as acceptance of the decision. Thus, when the aggrieved employee did not request an appeal before the Board, he failed to complete the administrative process, and thereby accepted the adverse committee decision. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

All College of Micronesia disputes must be brought before its administrative body, as a court of first instance, before it will be heard by this court, and, under the primary jurisdiction doctrine, the administrative processes created by that agency must ordinarily be completed before the court will entertain either a petition for review or an independent common law complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 264-65 (Pon. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when the person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence, and if the court so concludes, then the findings are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the appellate division. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These APA provisions apply to all agency action unless Congress by law provides otherwise and they apply to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015).

A reviewing court must hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272-73 (Pon. 2015).

When the Social Security Board's final order denying the plaintiff benefits because of remarriage rests on findings of fact that are supported by competent, material, and substantial evidence and does not violate 17 F.S.M.C. 111(3)(b), its decision will be affirmed. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

When the summary that was submitted indicates the testimonies that were given and recorded and is an adequate account of the hearing, and when the plaintiff does not point to any discrepancy in the summary or dispute any of its content to show that what is presented to the court as the record is insufficient, the court finds, based on the hearing officer's discretion under 17 F.S.M.C. 109(5), and a review what was provided, that the submitted summary is sufficient to

constitute the record. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

The national government has decided, by statute, that it will defend its interests in an action for judicial review of a tax assessment through its Secretary of Finance, who will be the named defendant. The deletion of other parties as named defendants therefore seems proper. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Declaratory judgment is the least intrusive judicial remedy. Usually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance. Notably, under the arbitrary and capricious standard, as required by the Public Service System Act, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

When the plaintiff has in good faith requested the resumption of the administrative process and the agency has verbally denied that request, the court may grant relief to the extent that the plaintiff requests declaratory relief requiring the administrative proceedings' resumption, but to the extent that the plaintiff has requested further declaratory relief regarding the validity of her termination, or the legality of a settlement offer, the court cannot grant that relief because that determination is within the administrative agency's exclusive jurisdiction and it is inappropriate for the court to unnecessarily encroach on the administrative domain. Eperiam v. FSM, 20 FSM R. 351, 356-57 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition must be served on the Board, by service on its secretary or other designated agent, and thereupon the Board must certify and file in court a copy of the record upon which the order was entered. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to Social Security Administration appeals because no part of the Social Security Act provides otherwise. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

A Social Security benefit is any retirement (old age), disability, dependent's, survivor's, or other insurance benefit prescribed in the Act. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 n.2 (Pon. 2016).

Parties who appeal decisions of the Social Security Board may enter additional evidence for the court's consideration. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

An appeal of an administrative agency decision can only be reviewed on the grounds of violation of law or regulation or denial of due process or of equal protection of the laws. Solomon v. FSM, 20 FSM R. 396, 400-01 (Pon. 2016).

Absent sufficient factual affirmations to buttress the relevant claim, coupled with the plaintiff's failure to denote what portion of the relevant agency decision was flawed, the defendants cannot be expected to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

The FSM Supreme Court's review of an agency decision is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusions that a violation of the kind justifying the termination has occurred. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning;

and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals since no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Parties who appeal Social Security Board decisions are allowed to enter additional evidence for the court's consideration. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

Since, by statute, the findings of the Social Security Board as to the facts, if supported by competent, material, and substantial evidence, are conclusive, the statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

Generally there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 n.2 (Yap 2016).

If a public employee does not prevail on his grievance, then he could have sought judicial review of the decision within the applicable six-year statute of limitations, but when the employee received a decision in his favor, the statute of limitations was immediately suspended and the State's own inaction thereafter cannot be used to run the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations does not to continue to run against a state employee when a favorable decision was rendered to him. To come to such a conclusion would mean any agency could immunize itself from judicial review simply by extending delay for six years or until the statute of limitations has run. Therefore, the statute of limitations was suspended when the favorable decision was rendered on December 12, 2001 until the January 22, 2015 decision to overturn the first determination, and thus a petition for writ of mandamus filed in Kosrae State Court on April 1, 2015 was, as a result of the tolled period, well within the six-year limitations period. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

Anyone aggrieved by a Social Security Board final order may obtain a review of that order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the

order, a written petition praying that the order be modified or set aside in whole or in part. The court may order the Board to take additional evidence in such manner and upon such conditions as the court considers proper, and the Board may thereafter modify its findings and order. The court's judgment on the record is final, subject to review by the FSM Supreme Court appellate division upon petition of any aggrieved party, including the Board, filed within 60 days from judgment. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. Seiola v. FSM Social Sec. Admin., 21 FSM R. 205, 209 (Pon. 2017).

Anyone aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 266 (Pon. 2017).

Under the Administrative Procedures Act, the court must, on an appeal from an FSM administrative agency, hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These provisions apply to all agency action unless Congress by law provides otherwise, and it applies to Social Security Administration appeals because the Social Security Act does not provide otherwise. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 266 (Pon. 2017).

Judicial review of an agency decision is confined to the record. Although the court may receive briefs, hear oral argument, and receive supplemental evidence, the court cannot substitute its judgment for that of the agency on factual questions and must give appropriate weight to the agency=s experience, technical competence, and specialized knowledge. Celestine v. FSM Social Sec. Admin., 21 FSM R. 263, 268 (Pon. 2017).

Statutory authority for judicial review of a Social Security Board decision provides that the Board's findings as to the facts, if supported by competent, material and substantial evidence, are conclusive. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 415-16 (App. 2018).

Generally there are three possible standards of review for administrative decisions: 1) arbitrary and capricious or abuse of discretion; 2) reasonableness or substantial evidence; and 3) de novo or agreement review. Judicial review of social security law cases, because the statute expressly uses the words "reasonableness" and "substantial," uses the intermediate standard. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Since 53 F.S.M.C. 703 expressly grants Social Security rule-making power, judicial review is limited to determining whether the promulgated regulations exceed the statutory authority, which is an issue of law reviewed de novo on appeal. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

When an applicant was notified that evidence of dependency was lacking and did not apply to adduce additional evidence, the Board's findings as to the facts, if supported by competent, material and substantial evidence, are conclusive since there was no further evidence of dependency proffered. Thus, the trial court's grant of summary judgment in Social Security=s favor was proper, since the applicant failed to adduce sufficient evidence of dependency, as required by statute. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 419 (App. 2018).

Generally, there are three standards of review for administrative decisions: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and 3) de novo, or agreement review. The Social Security statute's unambiguous language indicates a clear congressional intent for judicial review of all social security administration disputes upon the intermediate substantial evidence standard. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 (App. 2018).

The standards of review in any given administrative scheme are generally established by statute. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 n.1 (App. 2018).

The standard of review for social security cases is highly deferential. The appellate court must presume the trial court's finding that the Board's action was valid and affirm the decision if a reasonable basis, or substantial evidence, exists for it. The appellate court's role is to determine whether the trial court was correct in upholding the Board's decision. In doing so, it reviews the Board's decision to make sure that it applied the correct legal standards and reviews the entire administrative record to ascertain whether its findings are supported by substantial evidence. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 (App. 2018).

An appellate court has plenary authority over a lower court's review of an agency decision, and applies the same legal standards that pertain in the trial court and accords no deference to the lower court's decision. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424 n.2 (App. 2018).

A court will consider additional evidence at the aggrieved party's motion only when supported by reasonable grounds for failure to adduce the evidence in the hearing before the Social Security Board, and when the claimant made no such showing of a reasonable failure to elicit evidence, the remaining question is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence, and if the court so concludes, then the Board's findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 424-25 (App. 2018).

When the applicant testified at the administrative level that the marriage was accepted by members of her community; that she and her partner had been living together for three years; that she has a sacred Pohnpeian title exclusively given to the wife of the second in chief, which is her partner's title; that her title is derived from being her partner's customary wife; and that she serves as her partner's wife at traditional feasts, Social Security's determination that she had remarried was valid since there was a reasonable basis, or substantial evidence, for its decision. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427-28 (App. 2018).

In reviewing the evidence in the record below, the court must recognize that it is primarily Social Security's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes since substantial evidence is a deferential standard, which is more than

a scintilla or some evidence, but less than a preponderance of evidence. The court does not assume the fact-finder's role, since the issue is purely one of law. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

When the court finds substantial evidence in the record supporting Social Security Board's findings, it must affirm the Board's decision that the applicant remarried and is thus not entitled to further social security survivor benefits as a result thereof. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

A court, deciding all relevant legal questions, will set aside and hold unlawful a Pohnpei administrative agency decision if the decision was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or contrary to constitutional right, power, privilege or immunity; or in excess of statutory jurisdiction, authority or limitations, or short of statutory right; or without observance of procedure required by law. Phillip v. Pohnpei, 21 FSM R. 439, 443 (Pon. 2018).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except if the aggrieved person shows that there were reasonable grounds for failure to adduce the evidence in the Board hearing. When no showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If so, then the findings of fact are conclusive, and the trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492 (Kos. 2018).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise, and it applies to the Social Security Administration appeals because the Social Security Act does not provide otherwise. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 492-93 (Kos. 2018).

In past practice, it was common for the Kosrae Land Commission to be named a defendant when a party had occasion to complain about one of its acts or omissions since administrative agencies were often named as defendants when a party sought judicial review of the administrative agency's act or omission. But there is no reason why the Land Court should be a party to such an action because the Kosrae Land Court, unlike its predecessor, is not an administrative agency; it is a court. It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

A person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court, which must hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 595 (Pon. 2018).

The standard of review of an agency decision is to determine whether the action was lawful. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 596 (Pon. 2018).

The Pohnpei Code sets out a court's scope of review of Pohnpei agency decisions. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 140 (Pon. 2019).

A court will not overturn a Pohnpei Public Lands Trust Board decision for which there was a rational basis unless that decision was rendered unlawfully – in violation of one or more subsections of 8 Pon. C. ' 3-104(2). Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 143 (Pon. 2019).

The proper test is whether there is a rational basis for the administrative order and when a determination is made and the board has not acted in excess of its jurisdiction, in violation of lawful procedure, arbitrarily, or in abuse of its discretionary power the courts have no alternative but to confirm its determination. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 143 (Pon. 2019).

Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 143-44 (Pon. 2019).

A Public Lands Trust Board decision had a sound basis in reason and with regard to the facts when it favored the expansion of an existing business that serves the general population over another's proposed new business that would serve a narrow market segment because it was not unreasonable or irrational for the Board to favor assisting or encouraging an existing business with a proven track record rather than take a chance on the possible success of a proposed new development of uncertain utility or usefulness; because the Board had sufficient evidence upon which to make this determination; and because it followed procedures that should have assured a fair and rational decision-making process. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 (Pon. 2019).

The substantial-evidence rule, codified at 8 Pon. C. ' 2-104(2)(e), provides that the Public Lands Trust Board=s factual findings will not be overturned if there is substantial evidence to support those findings. The substantial-evidence rule is a very deferential standard of review. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 n.4 (Pon. 2019).

Even when there is evidence upon which the Board might have reached a different result, the scope of judicial review is limited to a determination whether the board could reasonably reach its results upon the evidence before it, and a reviewing court is not privileged to substitute its findings for those of the board even though the court might have reached a different conclusion if it had made the original determination upon the same evidence the board considered. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 (Pon. 2019).

If the court finds that a Pohnpei agency's determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 (Pon. 2019).

When the Public Lands Trust Board, in reaching its decision, did not act in excess of its jurisdiction, or violate lawful procedure, or act arbitrarily and capriciously, or in abuse of its power, the court has no alternative but to confirm the Board's determination that the lot should be leased to one of two bidders. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 145 (Pon. 2019).

The standard of judicial review of a Board of Trustees of the Pohnpei State Public Lands Trust decision is a very deferential one, and affirmance of the Board's decision is mandated except when that decision is arbitrary, capricious, an abuse of discretion, unlawful, unsupported by substantial evidence, or the Board has committed prejudicial error (that is, an error that was not harmless error). If a Board decision has a rational basis and was not made through an unlawful procedure or contrary to law, it must be affirmed. That is a high hurdle to clear. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 206-07 (Pon. 2019).

When a plaintiff successfully creates a presumption, he not only satisfies his burden of going forward but also shifts that burden to the defendant. The defendant then must rebut the presumption to satisfy his burden of going forward. The burden of persuasion normally remains on the plaintiff for his claim throughout the trial. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

An immigration appeal committee's decision constitutes the final agency action for the purposes of title 17 of the FSM Code, and under Title 17, a person adversely affected or aggrieved by agency action is entitled to judicial review thereof in the FSM Supreme Court, except to the extent that statutes explicitly limit judicial review, but no statute explicitly limits judicial review of a 50 F.S.M.C. 116(2) final action. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

Once a final immigration agency action is properly before the court, the court can conduct a *de novo* trial of the matter and receive in evidence any or all of the record from the administrative hearing that is stipulated to by the parties, and to the extent necessary for the decision and when presented, the court can decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. Macayon v. FSM, 22 FSM R. 544, 551 (Chk. 2020).

When, because the court referred the matter for administrative review, the plaintiff had an opportunity to vindicate its rights and the Secretary reevaluated his previous decisions and reversed himself, the error was corrected through the administrative review process, which is consistent with the procedure's purpose. The court thus cannot find a reason to award the plaintiff damages or attorney's fees, especially when the plaintiff waited a year before exercising its rights under the statute, which greatly increased its attorney's fees due to the need to obtain injunctive relief. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634-35 (Pon. 2020).

– Rules and Regulations

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

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

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

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

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

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

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

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

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

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

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

Regulations do not come into effect when they have not been filed with the Registrar of Corporations. Regulations cannot extend or limit the reach of the statute that authorizes it. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

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

When the state has held a hearing and solicited comments before adopting the regulations and when the defects the plaintiffs complain of in the regulations are not ripe for court decision and are of the type that are more properly addressed through state administrative action, the injury is a speculative one, especially when the plaintiffs have not demonstrated any attempt to apply for a license under the regulations. If the plaintiffs apply for a license and are denied, they may pursue remedies through the state administrative procedures act Nagata v. Pohnpei, 11 FSM R. 417, 418 (Pon. 2003).

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

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

The Financial Management Regulations apply to the expenditure, obligation, and disbursement of funds. These Regulations were promulgated by the Secretary of Finance pursuant to statutory authority and have the force and effect of law. Under the statutes and regulations, funds cannot be used for any purpose other than for which they were allotted, and the Project Control Document is a legally binding document which sets forth the purposes for which the allotted funds must be used. FSM v. Fritz, 12 FSM R. 602, 604 (Chk. 2004).

A former Secretary of Finance's testimony as to his current understanding of the legal effect and the meaning of certain regulations can only be given little or no weight since it does not qualify as satisfactory "legislative history." The regulations speak for themselves. FSM v. Fritz, 12 FSM R. 602, 604 (Chk. 2004).

The Project Control Document is a legally binding document that sets forth the purposes for which the allotted funds must be used and the regulations prohibit the use of funds for a purpose other than for which they are allotted. Moses v. FSM, 14 FSM R. 341, 343 & n.3 (App. 2006).

The Financial Management Regulations promulgated by the Secretary of Finance pursuant to statutory authority have the force and effect of law. Moses v. FSM, 14 FSM R. 341, 343 n.3 (App. 2006).

When a regulation is clear and unambiguous that all port fees and charges are due and owing must be paid within thirty days of the port authority=s demand and the word "demand," which the court will construe in accordance with common usage, means to claim as one's due, to require, to request for payment of debt or amount due, to ask with authority, claim or challenge as due, or to ask as by right, the port authority could satisfy the demand requirement by simply making a written request for payment, which could take the form of an invoice or letter. Ehsa v. Pohnpei Port Auth., 14 FSM R. 481, 485 (Pon. 2006).

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. FSM v. Koshin 31, 16 FSM R. 15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The transponder-on violation in the Administrative Penalties Regulations is a violation of a condition of a fishing access agreement under the APRs' Violation Penalty section. Violation of an access agreement is something for which no specific penalty is provided under Title 24, and which falls within the catch-all provision of Section 920, and may be subject to administrative penalties. FSM v. Koshin 31, 16 FSM R. 15, 21-22 (Pon. 2008).

A public service system employee=s claim or disagreement over the employee's pay, working conditions, or status is a grievance for which the Truk Public Service System Act requires that regulations prescribe a system for hearing. The Truk Public Service Regulations provide for a Truk Public Service Grievance System that covers any employment matter of concern or dissatisfaction to an eligible employee. The regulations contain two grievance procedures, an informal grievance procedure, and a formal grievance procedure. An employee must show evidence of having pursued the employee's grievance informally before the employee can utilize the formal grievance procedure. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and

the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it and an unconstitutional statute may not be redeemed by voluntary administrative action. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 161 (Chk. 2010).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Trust Territory Code Title 17, section 4(1) prescribes the procedure an administrative agency must follow before it adopts a rule or regulation. Chuuk State Law No. 2-94-06, section 2-17 prescribes the procedure that should be followed once the Chuuk Health Care Plan's Board has decided to adopt a regulation so that the regulation becomes valid and takes effect. Since these two state law provisions do not conflict, it is entirely likely that the Chuuk Legislature, when it enacted the Chuuk Health Care Plan Act, intended that the notice and comment provision of the Administrative Procedure Act would also be followed by the Plan's Board before adopting a regulation to be presented to the Governor for approval. Chuuk Health Care Plan v. Pacific Int=l, Inc., 17 FSM R. 535, 540 (Chk. 2011).

Neither the FSM nor the Chuuk Constitutions require prior public notice before adopting a regulation. This is because as a general rule notice and hearing are not a constitutional requirement in the rule-making process or in legislation by administrative agencies. Prior public notice requirements for regulations are statutory. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.2 (Chk. 2011).

Agency rules adopted pursuant to a statutory rule-making proceeding are presumed valid and the burden is on the challenging party to establish the rules' invalidity by demonstrating that the rule-making agency adopted the rules in an unconstitutional manner, or exceeded its statutory authority, or otherwise acted in manner contrary to the statutory requirements. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 (Chk. 2011).

Generally, a regulation's validity depends on whether the administrative agency had the power to adopt the particular regulation, that is, whether the regulation was within the matter covered by the enabling statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.3 (Chk. 2011).

When a defendant challenging a regulation's validity has not established or made a substantial showing that the regulation was invalid because the agency acted in a manner contrary to statutory requirements in adopting the regulation, the agency is entitled to summary judgment that the defendant employer ought to have been remitting to the agency the employees' and the employer's health insurance contributions as required by the regulation and the employer's cross motion for summary judgment will be denied. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 541 (Chk. 2011).

A regulation can neither contradict nor extend the reach of statutory law. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 n.2 (Pon. 2012).

Regulations, even if promulgated by the Secretary, must not exceed or limit the statute's

reach. Thus, any promulgated regulation would have taken into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. The court will do likewise. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 626 (Yap 2013).

A regulation that conflicts with unambiguous statutes will not benefit from the deference the court shows to an agency interpreting its own enabling statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 75 (Pon. 2013).

Statutory construction must prevail over any contrary regulation since regulations that conflict with a statute are impermissible extensions of the statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Regulations have the force and effect of law. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

Regulatory language is interpreted the same way statutory language is. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

When a regulation's plain language applies only to toilet facilities that might contaminate sources of water that could be used for drinking purposes – in other words, fresh water and when the term "body of water" might be construed as covering the lagoon but in light of the regulation's clear intent to preserve potable water sources, it must be read as a catchall phrase meant to cover any other potential potable water source, the regulation does not apply to a toilet on a berm in a salt-water lagoon. Berman v. Pohnpei, 19 FSM R. 111, 116-17 (App. 2013).

When a law's plain language is ambiguous, a court may look to the law's purpose – the evil that it was intended to remedy – to interpret the law. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When a regulation's purpose – the evil that the regulation is designed to prevent – is the contamination of drinking water, it would not apply to a case where it might be proven that the privy on the berm leaks pollutants into the lagoon as the lagoon is not a possible potable water source since it is salt water and that evil is not covered by the regulation. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

A regulation cannot impermissibly extend or limit the reach of the statute that authorizes it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014).

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing,

and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Regulatory language is interpreted in the same way that statutory language is. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

While it is true in construction of statues, thus also of regulations, that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. The fact that a word "may" is used is not conclusive, since it is well settled that permissive words may be interpreted as mandatory where such construction is necessary to effectuate legislative intent. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

The discretion an aggrieved College of Micronesia employee has when the grievance has not been resolved informally is the choice to further pursue the grievance through the formal procedure or to abandon the grievance altogether. It is not the discretion to either pursue the formal grievance procedure or to go directly to court. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

By statute, the College of Micronesia must adopt a personnel system which provides that the College's employees are not, for any purpose, employees of any FSM government or its political subdivisions, and which must guarantee that every College official, faculty member, and other employee is entitled to hold his or her position during good behavior, subject to suspension, demotion, layoff, or dismissal only as provided in the College's personnel regulations. Ramirez v. College of Micronesia, 20 FSM R. 254, 265-66 (Pon. 2015).

Regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Since, if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, Social Security would be vulnerable to abuse, exploitation, and misconduct. Therefore, the Social Security regulations that limit when benefits can be paid to adoptees are not *ultra vires*. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

The regulations that cover termination of shipping articles, do not afford the seaman the right to an administrative hearing before termination. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Since 53 F.S.M.C. 703 expressly grants Social Security rule-making power, judicial review is limited to determining whether the promulgated regulations exceed the statutory authority,

which is an issue of law reviewed de novo on appeal. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

53 F.S.M.C. 703 delegates to the Social Security Administration authority to promulgate regulations and provides that the Board may, pursuant to the Administrative Procedures Act, adopt, amend, or rescind regulations for the administration of the Social Security law. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

The statutory delegation of rule-making authority to Social Security implicitly recognizes its relative competence and expertise to ensure an efficient and equitable means to evaluate whether a claimant qualifies for benefits. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Social security regulations are entitled to great deference because Congress has given Social Security full power and authority to promulgate regulations necessary or appropriate to carry out the agency's function and therefore Social Security regulations are not *ultra vires*. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

Regulations may provide convenient remedies for the protection of the right secured and regulating the claim of citizenship so that its exact limits may be better known and understood, but any such legislation or regulation must be subordinate to the constitutional provision and in furtherance of its purpose, and must not, in any particular, attempt to narrow or embarrass it. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Supplemental legislation, and any lack of regulations promulgated thereunder, cannot supplant the FSM Constitution's clear mandate. Hartmann v. Department of Justice, 21 FSM R. 468, 476 (Chk. 2018).

Although the immigration regulations do not delegate the power to enforce the Immigration Act any further than the Secretary of Justice and the Chief of the Division of Immigration and Labor, the Chief obviously must act through subordinates who staff the ports of entry and the immigration offices in each of the four states. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

Regulations, even if properly promulgated, must neither exceed nor limit the statute=s reach. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

– Statutory Construction

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

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

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

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

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

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

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

Even if some deference is accorded to the legal judgment of an agency, the courts must remain the final authority on issues of statutory construction. Olter v. National Election Comm'r, 3 FSM R. 123, 132 (App. 1987).

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

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the statute's meaning. Michelsen v. FSM, 3 FSM R. 416, 421 (Pon. 1988).

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

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae

State Code ' 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

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

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director's decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

The statute requiring that the ad hoc committee hearing be conducted within the 15 calendar days of the receipt of the employee's appeal is directory and not mandatory, as the statute does not prescribe what happens if the prescribed time period is not adhered to. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

Statutory construction must prevail over any contrary regulation since regulations that conflict with a statute are impermissible extensions of the statute. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Courts must afford considerable weight to an agency's construction of a statute that it administers when Congress has not directly addressed the precise question at issue, but when the legislative intent is clear and unambiguous, that is the end of the matter. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77-78 (Pon. 2013).

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

The argument that the presumptions "cancel each other out" is not viable. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

When a plaintiff successfully creates a presumption, he not only satisfies his burden of going forward but also shifts that burden to the defendant. The defendant then must rebut the presumption to satisfy his burden of going forward. The burden of persuasion normally remains

on the plaintiff for his claim throughout the trial. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).